

Message

From: Ellen H. Grover [ehg@karnopp.com]
Sent: 11/14/2019 7:43:01 PM
To: Baron, Adam [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=563ef058707d4930868c6cf1e0828a43-Baron, Adam]
CC: michele stacona [michele.stacona@wstribes.org]; Nancy J. Hanson [njh@karnopp.com]; Brenda L Collette [BLC@karnopp.com]; Thurmon, Clarke [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=4ee51ecf20b146d18fb2874c6b0d1b31-Thurmon, Clark]; Travis Wells [travis.wells@wstribes.org]
Subject: RE: CTWS Compliance Orders

Great. Thank you for the confirmation. Kind regards, Ellen

Ellen Grover | Karnopp Petersen LLP
Partner

v: 541.382.3011 | e: ehg@karnopp.com

From: Baron, Adam [mailto:Baron.Adam@epa.gov]
Sent: Thursday, November 14, 2019 9:47 AM
To: Ellen H. Grover <ehg@karnopp.com>
Cc: michele stacona <michele.stacona@wstribes.org>; Nancy J. Hanson <njh@karnopp.com>; Brenda L Collette <BLC@karnopp.com>; Thurmon, Clarke <Thurmon.Clarke@epa.gov>; Travis Wells <travis.wells@wstribes.org>
Subject: RE: CTWS Compliance Orders

Ellen –

Thanks for checking in.

I spoke with Travis yesterday about the letter. I had already suggested some language in the bottom section specific to the extension request, which he has included. Based on the last draft I've seen, I believe that letter will be sufficient for us to respond on that requirement under the Emergency Order. Travis said the draft is in front of the Council now, and they're aiming to get it to us by this Friday, which is the due date for the engineering report.

Let me know if you need more. Otherwise we'll look forward to receiving that letter.



Adam Baron

Drinking Water Enforcement Officer
Field, Data, & Drinking Water Enforcement Section
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region 10
1200 Sixth Avenue, Suite 155
Seattle, Washington 98101
Office (206) 553-6361
baron.adam@epa.gov

From: Ellen H. Grover <ehg@karnopp.com>
Sent: Tuesday, November 12, 2019 8:06 PM

To: Baron, Adam <Baron.Adam@epa.gov>

Cc: michele stacona <michele.stacona@wstribes.org>; Nancy J. Hanson <njh@karnopp.com>; Brenda L Collette <BLC@karnopp.com>; Thurmon, Clarke <Thurmon.Clarke@epa.gov>; Travis Wells <travis.wells@wstribes.org>

Subject: RE: CTWS Compliance Orders

Hi Adam and Clarke: I know that you have been working with Travis on a funding plan for the Emergency Order. I am checking in with you on the need for an extension request letter for the Emergency Order or whether the funding letter developed by Travis is sufficient. That date is otherwise next week. Thanks! Ellen

Ellen Grover | Karnopp Petersen LLP

Partner

v: 541.382.3011 | e: ehg@karnopp.com

From: Baron, Adam [<mailto:Baron.Adam@epa.gov>]

Sent: Friday, September 27, 2019 3:11 PM

To: Ellen H. Grover <ehg@karnopp.com>

Cc: Alyssa Macy <alyssa.macy@wstribes.org>; michele stacona <michele.stacona@wstribes.org>; Nancy J. Hanson <njh@karnopp.com>; Brenda L Collette <BLC@karnopp.com>; Thurmon, Clarke <Thurmon.Clarke@epa.gov>

Subject: RE: CTWS Compliance Orders

Ellen –

Clarke is out of pocket for the next couple days due to some unforeseen circumstances, but he asked me to respond to this message for now. First, I just sent an email confirming the revised due date for 120 day Engineering Assessment is November 19, 2019. Second, EPA agrees that the due date on the air scour system repair for the river intake can be controlled by the terms of the AOC alone should they be re-negotiated between EPA and the Tribe.

If you need this message to come from EPA counsel, please let me know and I can find someone to fill in for Clarke.

Thanks.



Adam Baron

Drinking Water Enforcement Officer
Field, Data, & Drinking Water Enforcement Section
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region 10
1200 Sixth Avenue, Suite 155
Seattle, Washington 98101
Office (206) 553-6361
baron.adam@epa.gov

From: Ellen H. Grover <ehg@karnopp.com>

Sent: Wednesday, September 25, 2019 10:56 AM

To: Thurmon, Clarke <Thurmon.Clarke@epa.gov>

Cc: Baron, Adam <Baron.Adam@epa.gov>; Alyssa Macy <alyssa.macy@wstribes.org>; michele stacona <michele.stacona@wstribes.org>; Ellen H. Grover <ehg@karnopp.com>; Nancy J. Hanson <njh@karnopp.com>; Brenda L Collette <BLC@karnopp.com>

Subject: CTWS Compliance Orders

Importance: High

Hi Clarke:

Adam and I discussed the status of extension letters for the EPA orders (Administrative Compliance Order on Consent and the Emergency Order) with respect to the Warm Springs water system. Adam is meeting with CTWS staff and leadership today to confirm the status of actual compliance items in the AOC and develop, hopefully, a consensus on the applicable extension date for the AOC Order. I hope I can run a draft of the letter by you before it goes final but it would rely on Section 5.8 of the AOC for this request.

We also discussed that the Emergency Order had a later start date. It is my understanding that this start date for compliance of the Emergency Order is July 15, 2019. Accordingly, I believe the 120 day assessment would be due on or near November 11 (I haven't double checked or docketed this yet). **Can you please confirm in writing EPA's understanding of the start date and current compliance date for that?** Adam did confirm on the phone generally (but not specific dates). Because we will not be out of compliance until that November date and because we need more information to establish a reliable extension date, I would propose that we develop a second letter of extension for the Emergency Order. Please let me know if you see a problem with that approach.

Last, there is one item that appears in both the Emergency Order and the AOC. It's the river intake scour system item (Section 3.29 of Emergency Order and Section 4.1(q)) of the AOC. I would propose that we include a footnote in our AOC extension letter requesting that the extended AOC date control compliance for purposes of both orders. Please let me know if we should handle that differently.

Thanks and I hope all is going well for you. Ellen

Ellen Grover
Partner



360 SW Bond St, Ste. 400 | Bend, OR 97702
office: 541.382.3011 | email: ehg@karnopp.com
web: www.karnopp.com | blog: www.karnopp.com/blog



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Message

From: Barry Buchanan [Barry@buchananandassociates.com]
Sent: 10/15/2019 6:23:29 PM
To: Baron, Adam [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=563ef058707d4930868c6cf1e0828a43-Baron, Adam]; Green, Richard [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=80b69be2dc1642fb864b8bfb7f1b875b-Green, Richard]; tom.carney@hud.gov; david.p.boyd@hud.gov; Craig.Haugland@ihs.gov; Derek.Hancey@ihs.gov; Bryan Mercier [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=fe575211f277411e8e087fc6794e244c-Bryan Merci]; Haug, Brian [brian.haug@bia.gov]
CC: michele.stacona@wstribes.org; travis.wells@wstribes.org; bruce.irwin@wstribes.org; keithw@pdgnw.com; Barb Whisenhunt [bb@pdgnw.com]
Subject: Confederated Tribes of Warm Springs ... PDG/B&A Agency Communications

Good Morning All:

While working through emergency response projects for the Confederated Tribes of Warm Springs (CTWS) this summer, representatives of Project Delivery Group/Buchanan & Associates (PDG/B&A) have directly corresponded with you to collect or provide data and information to address project issues and assist Tribal Staff with project coordination. Thank you, collectively and individually for your availability and candor regarding CTWS funding, funding opportunities, and your agency requirements for project management and methodologies.

Michelle Stacona, the TRIBES CEO, has requested that we ensure the Agencies are aware that we do not represent the TRIBES, our communications with the Agencies are only to collect and collate information to solve potential or outstanding issues. However, Travis Wells, CTWS, Operations General Manager and Project Coordinator has requested that no communication be made between the Agencies and us without a Tribal member being involved or present.

Since we will be communicating with Travis or his designees moving forward, we ask that you direct questions and discussions required of us directly to Travis.

At this time, we also want to reiterate our appreciation for the part you and your agencies played in making the recent emergency repair projects at CTWS a success.

We will be looking for future opportunities to work with you and your agencies in assisting Tribes in the Northwest. Please add our firms to your contact lists for future reference and let us know if there is any way we can be of assistance.

Best regards
bb

PS: Adam, Brian, Derek ... the outstanding items we were discussing and need resolution to; we will coordinate through Travis over the next couple of days. Thanks bb.

Barry Buchanan, P.E.
PRINCIPAL CONSULTANT | **BUCHANAN** and ASSOCIATES
INFRASTRUCTURE PLANNING ... INFRA P
phone: 360 901 1564
e-mail: Barry@BuchananAndAssociates.com

Barbara Whisenhunt
PROJECT DELIVERY GROUP, LLC

503-364-4004 (Salem) | 530-215-1024 (Redding) | 503-302-8765 (Cell)
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Redding Office | 1890 Park Marina Drive Suite 210 Redding, CA 96001
www.PDGNW.com

Message

From: Ellen H. Grover [ehg@karnopp.com]
Sent: 9/25/2019 5:55:58 PM
To: Thurmon, Clarke [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=4ee51ecf20b146d18fb2874c6b0d1b31-Thurmon, Clark]
CC: Baron, Adam [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=563ef058707d4930868c6cf1e0828a43-Baron, Adam]; Alyssa Macy [alyssa.macy@wstribes.org]; michele stacona [michele.stacona@wstribes.org]; Ellen H. Grover [ehg@karnopp.com]; Nancy J. Hanson [njh@karnopp.com]; Brenda L Collette [BLC@karnopp.com]
Subject: CTWS Compliance Orders
Attachments: ATT00001.txt

Importance: High

Hi Clarke:

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Thanks and I hope all is going well for you. Ellen

Ellen Grover
Partner



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Message

From: Lambert, Aaron [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=3E6AED18A13B4661BA7585F1033F7EFF-LAMBERT, AARON]
Sent: 7/1/2019 11:19:53 PM
To: Alyssa.Macy@wstribes.org
CC: Tim.Outman@ctwsbnr.org; Robert.Brunoe@ctwsbnr.org; Baron, Adam [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=563ef058707d4930868c6cf1e0828a43-Baron, Adam]
Subject: 6.24.2019_EPA CAA Inspection Notification Letter.pdf
Attachments: 6.24.2019_CTWS CAA Inspection Notification Letter.pdf; 10apr19memo_reaffirming_epas_1984_indian_policy.pdf; r10_tribal_consultation_and_coordination_procedures.pdf; Questions and Answers on the Tribal Enforcement Process.pdf

Dear Ms. Macy,

I spoke with Tim Outman on the phone today and he indicated that I should also reach out to you regarding my upcoming trip to the Warm Springs Reservation on July 8th and 9th to conduct Clean Air Act inspections at two facilities located within the exterior boundaries of the Warm Springs Reservation.

Attached is a copy of the notification letter and the EPA tribal policy and procedure documents on tribal coordination, inspections, and enforcement I sent to Mr. Brunoe and Mr. Outman on June 24, 2019.

Please do not hesitate to contact me immediately if you have any questions regarding the inspections or attached documents.

Sincerely,
Aaron Lambert
Inspector
Air Toxics and Enforcement Section
Enforcement and Compliance Assurance Division
U.S. EPA Region 10
1200 Sixth Ave, Suite 155
Mail Code 20-C04
Seattle, WA 98101
Phone: (206) 553-5122

From: Lambert, Aaron
Sent: Monday, June 24, 2019 3:30 PM
To: Robert.Brunoe@ctwsbnr.org
Cc: Tim.Outman@ctwsbnr.org; Brozusky, Sandra <Brozusky.Sandra@epa.gov>; Wilson, Wenona <Wilson.Wenona@epa.gov>
Subject: 6.24.2019_EPA CAA Inspection Notification Letter.pdf

Dear Mr. Brunoe,

The purpose of the attached letter is to notify you that EPA plans to visit the Warm Springs Reservation to conduct Clean Air Act inspections at two facilities located within the exterior boundaries of the Warm Springs Reservation on July 8 and 9, 2019. In addition to the letter please also find attached EPA policy and procedure documents on tribal coordination, inspections, and enforcement for your review and reference.

Please do not hesitate to contact me immediately if you have any questions regarding the inspections or attached documents.

Sincerely,
Aaron Lambert
Inspector
Air Toxics and Enforcement Section
Enforcement and Compliance Assurance Division
U.S. EPA Region 10
1200 Sixth Ave, Suite 155
Mail Code 20-C04
Seattle, WA 98101
Phone: (206) 553-5122



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 10

1200 Sixth Avenue, Suite 155
Seattle, Washington 98101-3140

ENFORCEMENT AND
COMPLIANCE DIVISION

June 24, 2019

Reply to ECAD - 201

Mr. Robert Brunoe
Branch of Natural Resources, General Manager
Confederated Tribes of Warm Springs
1233 Veterans Street
PO Box C
Warm Springs, OR 97761

RE: Clean Air Act Inspections on the Warm Springs Reservation

Dear Mr. Brunoe:

I am providing a notification that EPA plans to enter the Warm Springs Reservation on July 8th and July 9th of 2019 to conduct inspections at two facilities located within the exterior boundaries of the Reservation.

The inspections are planned for the former Warm Springs Forest Products International facility and the Warm Springs Composite Products facility. During the inspections EPA will evaluate the compliance of both facilities with the Clean Air Act (CAA) and the Federal Air Rules for Indian Reservations (FARR).

EPA understands that both facilities are owned and or operated by the Confederated Tribes of Warm Springs, and as such, any instances of non-compliance identified at the facilities will be communicated to the Tribe and addressed according to EPA's Tribal consultation and coordination policies and enforcement procedures. I have included copies of those policy and procedure documents with this notification letter for your review and reference.

EPA contacted Tim Outman on May 9, 2019 and June 24, 2019 about the inspections to discuss the facilities that will be inspected, what will be done on the inspection, verification of appropriate contacts, and to hear tribal information and concerns. Prior to the inspection, I will visit the Natural Resource office to meet with Mr. Outman.

If you would like the opportunity to coordinate further with EPA regarding the inspection, or if you have any questions regarding the policies and procedures attached please do not hesitate to contact me immediately at lambert.aaron@epa.gov or by telephone at (206)553-5122.

Sincerely,

A handwritten signature in black ink, appearing to read "Aaron Lambert", with a long horizontal flourish extending to the right.

Aaron Lambert
Inspector, Air Toxics and Enforcement Section

cc: Sandra Brozusky, EPA
Wenona Wilson, EPA
Tim Outman, Confederated Tribes of Warm Springs, Branch of Natural Resources

Attachments:

EPA Memo reaffirming EPA's Indian Policy (1984)

Questions and Answers on the Tribal Enforcement Process (4/17/2007)

EPA Region 10 Tribal Consultation and Coordination Procedures (October 2012)




UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

April 5, 2019

THE ADMINISTRATOR

MEMORANDUM

SUBJECT: Reaffirmation of the U.S. Environmental Protection Agency's Indian Policy

FROM: Andrew R. Wheeler 

TO: All EPA Employees

The U.S. Environmental Protection Agency in 1984 became the first federal agency to adopt a formal Indian policy. Today, I am proud to formally reaffirm the *EPA Policy for the Administration of Environmental Programs on Indian Reservations* (attached). By my action, the EPA reiterates its recognition of the United States' unique legal relationship with tribal governments based on the Constitution, treaties, statutes, executive orders and court decisions. The EPA recognizes the right of tribes as sovereign governments to self-determination and acknowledges the federal government's trust responsibility to tribes. The EPA works with tribes on a government-to-government basis to protect their land, air and water.

The reaffirmation of the 1984 Indian Policy articulates the importance of the EPA's tribal programs and our relationship with tribal governments. Our work with tribes is crosscutting and affects all aspects of the EPA's day-to-day functions. As noted in the 1984 Indian Policy, the fundamental objective of the EPA is to protect human health and the environment. However, the key emphasis of this effort is to give special consideration to tribal interests in making agency policy and to ensure the close involvement of tribal governments in making decisions and managing environmental programs affecting reservation lands. To meet this objective, the EPA will continue to pursue the following principles as memorialized in the policy document:

1. The U.S. Environmental Protection Agency stands ready to work directly with Indian tribal governments on a one-to-one basis (the "government-to-government" relationship) rather than as subdivisions of other governments.
2. The EPA will recognize tribal governments as the primary parties for setting standards, making environmental policy decisions and managing programs for reservations, consistent with EPA standards and regulations.
3. The EPA will take affirmative steps to encourage and assist tribes in assuming regulatory and program management responsibilities for reservation lands.
4. The EPA will take appropriate steps to remove existing legal and procedural impediments to working directly and effectively with tribal governments on reservation programs.
5. The EPA, in keeping with the federal trust responsibility, will assure that tribal concerns

and interests are considered whenever the EPA's actions and/or decisions may affect reservation environments.

6. The EPA will encourage cooperations between tribal, state and local governments to resolve environmental problems of mutual concern.
7. The EPA will work with other federal agencies that have related responsibilities on Indian reservations to enlist their interest and support in cooperative efforts to help tribes assume environmental program responsibilities for reservations.
8. The EPA will strive to assure compliance with environmental statutes and regulations on Indian reservations.
9. The EPA will incorporate these Indian policy goals into its planning and management activities, including its budget, operating guidance, legislative initiatives, management accountability system and ongoing policy and regulation development processes.

It is an important time in our partnership with tribes as the EPA builds on past successes and strives to meet current and future environmental challenges together with tribes. Please join me in advancing our strong partnership with tribal governments to protect human health and to safeguard the environment in Indian Country.

Attachment

11/8/84

EPA POLICY FOR THE ADMINISTRATION OF ENVIRONMENTAL PROGRAMS ON INDIAN RESERVATIONS

INTRODUCTION

The President published a Federal Indian Policy on January 24, 1983, supporting the primary role of Tribal Governments in matters affecting American Indian reservations. That policy stressed two related themes: (1) that the Federal Government will pursue the principle of Indian "self-government" and (2) that it will work directly with Tribal Governments on a "government-to-government" basis.

The Environmental Protection Agency (EPA) has previously issued general statements of policy which recognize the importance of Tribal Governments in regulatory activities that impact reservation environments. It is the purpose of this statement to consolidate and expand on existing EPA Indian Policy statements in a manner consistent with the overall Federal position in support of Tribal "self-government" and "government-to-government" relations between Federal and Tribal Governments. This statement sets forth the principles that will guide the Agency in dealing with Tribal Governments and in responding to the problems of environmental management on American Indian reservations in order to protect human health and the environment. The Policy is intended to provide guidance for EPA program managers in the conduct of the Agency's congressionally mandated responsibilities. As such, it applies to EPA only and does not articulate policy for other Agencies in the conduct of their respective responsibilities.

It is important to emphasize that the implementation of regulatory programs which will realize these principles on Indian Reservations cannot be accomplished immediately. Effective implementation will take careful and conscientious work by EPA, the Tribes and many others. In many cases, it will require changes in applicable statutory authorities and regulations. It will be necessary to proceed in a carefully phased way, to learn from successes and failures, and to gain experience. Nonetheless, by beginning work on the priority problems that exist now and continuing in the direction established under these principles, over time we can significantly enhance environmental quality on reservation lands.

POLICY

In carrying out our responsibilities on Indian reservations, the fundamental objective of the Environmental Protection Agency is to protect human health and the environment. The keynote of this effort will be to give special consideration to Tribal interests in making Agency policy, and to insure the close involvement of Tribal Governments in making decisions and managing environmental programs affecting reservation lands. To meet this objective, the Agency will pursue the following principles:

1. THE AGENCY STANDS READY TO WORK DIRECTLY WITH INDIAN TRIBAL GOVERNMENTS ON A ONE-TO-ONE BASIS (THE "GOVERNMENT-TO-GOVERNMENT" RELATIONSHIP), RATHER THAN AS SUBDIVISIONS OF OTHER GOVERNMENTS.

EPA recognizes Tribal Governments as sovereign entities with primary authority and responsibility for the reservation populace. Accordingly, EPA will work directly with Tribal Governments as the independent authority for reservation affairs, and not as political subdivisions of States or other governmental units.

2. THE AGENCY WILL RECOGNIZE TRIBAL GOVERNMENTS AS THE PRIMARY PARTIES FOR SETTING STANDARDS, MAKING ENVIRONMENTAL POLICY DECISIONS AND MANAGING PROGRAMS FOR RESERVATIONS, CONSISTENT WITH AGENCY STANDARDS AND REGULATIONS.

In keeping with the principle of Indian self-government, the Agency will view Tribal Governments as the appropriate non-Federal parties for making decisions and carrying out program responsibilities affecting Indian reservations, their environments, and the health and welfare of the reservation populace. Just as EPA's deliberations and activities have traditionally involved the interests and/or participation of State Governments, EPA will look directly to Tribal Governments to play this lead role for matters affecting reservation environments.

3. THE AGENCY WILL TAKE AFFIRMATIVE STEPS TO ENCOURAGE AND ASSIST TRIBES IN ASSUMING REGULATORY AND PROGRAM MANAGEMENT RESPONSIBILITIES FOR RESERVATION LANDS.

The Agency will assist interested Tribal Governments in developing programs and in preparing to assume regulatory and program management responsibilities for reservation lands. Within the constraints of EPA's authority and resources, this aid will include providing grants and other assistance to Tribes similar to that we provide State Governments. The Agency will encourage Tribes to assume delegable responsibilities, (i.e. responsibilities which the Agency has traditionally delegated to State Governments for non-reservation lands) under terms similar to those governing delegations to States.

Until Tribal Governments are willing and able to assume full responsibility for delegable programs, the Agency will retain responsibility for managing programs for reservations (unless the State has an express grant of jurisdiction from Congress sufficient to support delegation to the State Government). Where EPA retains such responsibility, the Agency will encourage the Tribe to participate in policy-making and to assume appropriate lesser or partial roles in the management of reservation programs.

4. THE AGENCY WILL TAKE APPROPRIATE STEPS TO REMOVE EXISTING LEGAL AND PROCEDURAL IMPEDIMENTS TO WORKING DIRECTLY AND EFFECTIVELY WITH TRIBAL GOVERNMENTS ON RESERVATION PROGRAMS.

A number of serious constraints and uncertainties in the language of our statutes and regulations have limited our ability to work directly and effectively with Tribal Governments on reservation problems. As impediments in our procedures, regulations or statutes are identified which limit our ability to work effectively with Tribes consistent with this Policy, we will seek to remove those impediments.

5. THE AGENCY, IN KEEPING WITH THE FEDERAL TRUST RESPONSIBILITY, WILL ASSURE THAT TRIBAL CONCERNS AND INTERESTS ARE CONSIDERED WHENEVER EPA'S ACTIONS AND/OR DECISIONS MAY AFFECT RESERVATION ENVIRONMENTS.

EPA recognizes that a trust responsibility derives from the historical relationship between the Federal Government and Indian Tribes as expressed in certain treaties and Federal Indian Law. In keeping with that trust responsibility, the Agency will endeavor to protect the environmental interests of Indian Tribes when carrying out its responsibilities that may affect the reservations.

6. THE AGENCY WILL ENCOURAGE COOPERATION BETWEEN TRIBAL, STATE AND LOCAL GOVERNMENTS TO RESOLVE ENVIRONMENTAL PROBLEMS OF MUTUAL CONCERN.

Sound environmental planning and management require the cooperation and mutual consideration of neighboring governments, whether those governments be neighboring States, Tribes, or local units of government. Accordingly, EPA will encourage early communication and cooperation among Tribes, States and local governments. This is not intended to lend Federal support to any one party to the jeopardy of the interests of the other. Rather, it recognizes that in the field of environmental regulation, problems are often shared and the principle of comity between equals and neighbors often serves the best interests of both.

7. THE AGENCY WILL WORK WITH OTHER FEDERAL AGENCIES WHICH HAVE RELATED RESPONSIBILITIES ON INDIAN RESERVATIONS TO ENLIST THEIR INTEREST AND SUPPORT IN COOPERATIVE EFFORTS TO HELP TRIBES ASSUME ENVIRONMENTAL PROGRAM RESPONSIBILITIES FOR RESERVATIONS.

EPA will seek and promote cooperation between Federal agencies to protect human health and the environment on reservations. We will work with other agencies to clearly identify and delineate the roles, responsibilities and relationships of our respective organizations and to assist Tribes in developing and managing environmental programs for reservation lands.

8. THE AGENCY WILL STRIVE TO ASSURE COMPLIANCE WITH ENVIRONMENTAL STATUTES AND REGULATIONS ON INDIAN RESERVATIONS.

In those cases where facilities owned or managed by Tribal Governments are not in compliance with Federal environmental statutes, EPA will work cooperatively with Tribal leadership to develop means to achieve compliance, providing technical support and consultation as necessary to enable Tribal facilities to comply. Because of the distinct status of Indian Tribes and the complex legal issues involved, direct EPA action through the judicial or administrative process will be considered where the Agency determines, in its judgment, that: (1) a significant threat to human health or the environment exists, (2) such action would reasonably be expected to achieve effective results in a timely manner, and (3) the Federal Government cannot utilize other alternatives to correct the problem in a timely fashion.

In those cases where reservation facilities are clearly owned or managed by private parties and there is no substantial Tribal interest or control involved, the Agency will endeavor to act in cooperation with the affected Tribal Government, but will otherwise respond to noncompliance by private parties on Indian reservations as the Agency would to noncompliance by the private sector elsewhere in the country. Where the Tribe has a substantial proprietary interest in, or control over, the privately owned or managed facility, EPA will respond as described in the first paragraph above.

9. THE AGENCY WILL INCORPORATE THESE INDIAN POLICY GOALS INTO ITS PLANNING AND MANAGEMENT ACTIVITIES, INCLUDING ITS BUDGET, OPERATING GUIDANCE, LEGISLATIVE INITIATIVES, MANAGEMENT ACCOUNTABILITY SYSTEM AND ONGOING POLICY AND REGULATION DEVELOPMENT PROCESSES.

It is a central purpose of this effort to ensure that the principles of this Policy are effectively institutionalized by incorporating them into the Agency's ongoing and long-term planning and management processes. Agency managers will include specific programmatic actions designed to resolve problems on Indian reservations in the Agency's existing fiscal year and long-term planning and management processes.



William D. Ruckelshaus



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

APR 17 2007

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

MEMORANDUM

SUBJECT: Transmittal of the Questions and Answers on the Tribal Enforcement Process

FROM: Walker B. Smith, Director *WBS*
Office of Civil Enforcement

TO: Senior Enforcement Managers, Regions I - X
Regional Counsel, Regions II - VII, IX, X
Senior Legal Enforcement Managers Region I, VIII

This memorandum transmits the final "Questions and Answers on the Tribal Enforcement Process." The Office of Enforcement and Compliance Assurance (OECA) worked with the American Indian Environmental Office, the Office of General Counsel, and the regional offices in developing this guidance. We also circulated the document to federally recognized Indian tribes and solicited their input.

This document provides assistance in implementing the "EPA Policy for the Administration of Environmental Programs on Indian Reservations" (November 8, 1984) (Indian Policy) and responds to questions raised by tribes and EPA regional offices since OECA issued the "Guidance on the Enforcement Principles Outlined in the 1984 Indian Policy" (Enforcement Guidance) in January 2001. It covers case-specific issues surrounding compliance assistance, inspections, and enforcement. It also emphasizes points in the enforcement response process when it is particularly important to keep the affected tribe apprised of developments and to consult and coordinate with the tribal government. Key points that are expanded in this guidance include:

- what is considered a "tribal facility" for purposes of the Enforcement Guidance,
- the development and implementation of a written compliance plan,
- when enforcement action may be appropriate, and
- examples of exigent circumstances affecting the applicability of the processes set forth in the Enforcement Guidance.

We hope this document assists EPA's regional offices in their efforts to ensure that the process of compliance assurance in Indian country, from inspection planning to formal

settlement, is as straightforward and transparent as possible. Our goal is to give Regions and tribes the tools they need to ensure protection of human health and the environment in Indian country to the same extent it is assured outside of Indian country. We reiterate our resolve to use compliance and technical assistance to help tribal facilities achieve compliance with environmental laws and regulations. However, where such compliance assistance does not achieve a timely return to compliance, we also want to ensure that the Regions carefully consider their enforcement options in a time frame that ensures that human health and the environment in Indian country are not compromised.

If you have any questions, please contact me or have your staff contact Mary Andrews of my staff at (202) 564-4011. I appreciate your continued efforts to ensure human health and environmental protection in Indian country through your work on, and implementation of, this document.

Attachment

cc: Enforcement Coordinators, Regions I-X
Pat Hirsch, Acting Principal Deputy General Counsel
Carol Ann Siciliano, Acting Associate General Counsel, Cross-Cutting Issues Law Office
Carol Jorgensen, Director, American Indian Environmental Office
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Questions and Answers on the Tribal Enforcement Process

In 1984, the U.S. Environmental Protection Agency (EPA or Agency) issued the “EPA Policy for the Administration of Environmental Programs on Indian Reservations” (Nov. 8, 1984) (Indian Policy), which sets forth principles to guide the Agency in dealing with federally recognized tribal governments and in its actions to protect human health and the environment in Indian country.¹ The Indian Policy established a policy of graduated response to noncompliance for facilities owned or operated by tribes, in which a tribal government has a substantial interest, or over which a tribal government has control (tribal facilities). In 2001, the Office of Enforcement and Compliance Assurance (OECA) issued a “Guidance on the Enforcement Principles Outlined in the 1984 Indian Policy” (January 17, 2001) (Enforcement Guidance), which sets forth procedures for EPA to follow when conducting compliance evaluations in Indian country.

The Enforcement Guidance established a process whereby EPA will consult with tribal governments and allow tribal facilities an opportunity to return to compliance with EPA assistance, and if this is insufficient, to allow EPA to proceed with enforcement action so as to protect human health and the environment. This document responds to questions about compliance assistance, compliance monitoring, and enforcement at facilities in Indian country that have been raised since the Enforcement Guidance was issued.

The questions and answers in this document apply only to violations of EPA’s civil regulatory programs. They do not apply to criminal conduct, criminal investigations, or enforcement pursuant to criminal provisions of laws or regulations that are enforced by EPA.

This document is intended solely as guidance for employees of EPA. It is not a regulation and does not impose any legally-binding requirements on EPA or the regulated community. It may not be relied upon to create a right or benefit. EPA retains the discretion to adopt approaches on a case-by-case basis that differ from this guidance.

I. Is the Facility a Tribal Facility?

If a facility is owned, managed, or operated by a tribal government, or a tribal government has a substantial interest in, or exercises control over, the facility, then the facility is a tribal facility and EPA should follow the process set forth in the Enforcement Guidance in proceeding with compliance assistance and enforcement. Tribal facilities can include facilities located within or outside Indian country.

¹ Indian country is defined in 18 U.S.C. § 1151 to include Indian reservations, dependent Indian communities, and Indian allotments.

1. **Q:** *Who is responsible for determining whether a facility is a tribal facility? How do I coordinate with the affected tribe in determining whether the facility is a tribal facility?*

A: The EPA regional offices are responsible for making this determination. However, unless the tribal interest is already known, EPA Regions should give the affected tribe an opportunity to provide information regarding its interest in the facility and to consult with EPA regarding the tribe's interest. In order to obtain the tribe's views, and to obtain any other information which may be useful in assessing the facility's status, the Region may send the tribal government a letter outlining the Enforcement Guidance and soliciting the tribe's views, summarizing any information the Region already has in this regard. Informal discussions with tribal government staff, such as the tribal environmental department, prior to or after sending the letter, may also be useful and may help to obtain a prompt response. In cases where it is obvious that a non-compliant facility is a tribal facility, discussion with the tribe on this issue would be unnecessary. For example, if the facility is a tribally-operated public water supply system, such discussions would be unnecessary. EPA's analysis of this information and its determination should be sent to the tribe and documented in the case file.

2. **Q:** *Is the facility owned, managed, or operated by a tribal government?*

A: A facility in which a tribe holds a substantial ownership, management, or operational interest is a tribal facility. For example, a facility operated by a tribally-owned utility service is a "tribal facility." A facility owned, managed, or operated by tribal members is not a tribal facility unless a tribal government has a substantial interest in, or exercises control over, the facility, as described further below.

3. **Q:** *Does a tribal government have a substantial proprietary interest in or control over the facility?*

A: The Region should consider the nature and extent of the tribal government's ownership interest, and the tribe's input concerning its interest, when determining whether the tribe has a "substantial proprietary interest" in the facility. Depending on the circumstances of a particular facility, a significant ownership interest, corporate relationship, or other factors may give the tribe control over operations such that it is a tribal facility. For example, a manufacturing facility or agricultural operation owned and operated by a tribal development corporation would typically be a "tribal facility."

4. **Q:** *Can a tribal government have a substantial interest in a facility that is not "proprietary"?*

A: The Enforcement Guidance recognizes that a tribal government may have a substantial interest in a facility that is not a proprietary interest. For example, if a facility provides a significant source of employment for the tribe, the Region may consider this interest before proceeding to address the noncompliance. The existence of a lease between a tribe and the operator of a facility does not, in itself, establish a substantial non-proprietary interest. However, the terms of a particular lease may give the tribe control over operations such that it is a tribal

facility. In addition, the income generated by the lease may in some cases give the tribe a significant financial interest in the facility such that it is appropriate for EPA to treat the facility as a tribal facility.

In these circumstances it may be appropriate to ask the tribe about the nature of its lease revenue to determine whether it constitutes a substantial interest within the meaning of the Enforcement Guidance. An inquiry into non-proprietary interests is intended to capture situations where a tribe has a sufficient interest in a facility that it is appropriate for EPA to work cooperatively with the tribal government to help the facility achieve compliance. However, since an enforcement action does not typically influence ongoing facility operations, lease payments and employment numbers are unlikely to be affected by an enforcement action against the facility. For example, in one instance, a tribe indicated that it had a substantial non-proprietary interest in an oil production facility operated by a private oil company due to the lease payments to the tribe and the number of tribal members employed at the facility. Based on this information, EPA determined that the facility should be treated as a tribal facility. However, the tribe asked EPA to proceed with enforcement action against the facility without applying its process for enforcement at tribal facilities.

5. **Q:** *How do I respond if the facility is not a “tribal facility”?*

A: Once EPA has determined that a facility is not a tribal facility, EPA generally responds to noncompliance in the same manner as with a facility outside Indian country. EPA should notify and consult with the affected tribal government on a government-to-government basis to the greatest extent practicable and to the extent permitted by law. However, EPA communications with the tribal government may be constrained by the need to preserve the confidentiality of enforcement sensitive or confidential business information.

II. What Do I Do When Planning Information Requests and Inspections of Facilities in Indian country?

6. **Q:** *Should OECA concurrence be obtained before issuing information requests?*

A: No, the OECA concurrence process does not apply to requests for information. However, the Region should inform the relevant tribal government when issuing information requests to tribal facilities, and where appropriate, may inform tribal governments of information requests issued to non-tribal facilities located in Indian country.

7. **Q:** *Should OECA concurrence be obtained before conducting inspections?*

A: No, OECA concurrence is not called for before conducting inspections. Consistent with the Indian Policy and the “Presidential Memorandum on Government to Government Relations with Native American Tribal Governments” (April 29, 1994), the Region should generally notify the tribal government in advance of visiting a facility in the tribe’s Indian country, and offer the tribe an opportunity to coordinate further with EPA regarding the inspection where practicable. If advance notice is not possible or if the visit involves an unannounced inspection, EPA should

contact the tribal government as soon as possible after the inspection.

8. **Q:** *Should I meet with the tribe before the inspection?*

A: Before an inspection the Region should contact the tribe to discuss the planned activities for your visit, including:

- facilities targeted for inspection during your visit;
- what you will do during your visit and what potential follow-up actions may be needed;
- tribal information and concerns regarding the facilities to be inspected; and
- verification of appropriate contacts for the tribe and EPA.

Where appropriate, the Region should also offer the tribe an opportunity to meet with EPA before the inspection. This is particularly important when the Region has not recently visited this tribe or has not established a routine working relationship with the affected tribe.

III. What Do I Do If I Identify Noncompliance?

EPA should inform the tribal government of the results of each inspection in a timely manner. If EPA identifies potential non-compliance at a tribal facility, EPA should follow the procedures in the Enforcement Guidance as clarified below.

9. **Q:** *What is the role of the state in which the facility is located when EPA is addressing noncompliance at a facility in Indian country?*

A: Under general principles of federal Indian law and policy, primary jurisdiction in Indian country generally rests with the federal government and the tribe inhabiting it, and not with the states. Accordingly, unless and until a tribal government is approved by EPA to implement a federal environmental program, EPA generally implements the program in Indian country. State contact may be appropriate under certain exceptions to this general rule. For example, on the Puyallup Reservation, an act of Congress allows the State of Washington to be the lead agency for administration of certain programs on non-trust land within the historic boundaries of the reservation.

At the same time, EPA's Indian Policy encourages cooperation between tribal, state, and local governments to resolve environmental problems of mutual concern. Therefore, it may be appropriate for EPA, after consulting with the affected tribe, to notify the state in which a facility is located when a facility's noncompliance may be of mutual concern to the state and tribe. In consultation with the affected tribe, EPA may also in appropriate circumstances coordinate with the state and the tribe in ensuring that adequate compliance assistance is provided. Where a state asserts jurisdiction in Indian country, EPA's regional staff should notify the Office of Regional Counsel and the Office of General Counsel, as appropriate, of the situation, consult with the relevant tribe, and confer with the state.

IV. Has EPA Developed a Written Compliance Plan?

10. **Q:** *What is the purpose of the written compliance plan?*

A: The written compliance plan is used to communicate to the facility and the tribal government identified noncompliance at tribal facilities and the steps necessary to return the facility to compliance. Putting the plan in writing helps to ensure that the tribe understands its responsibilities and the opportunities for assistance EPA will make available to the tribe as it works to achieve compliance. The compliance plan also gives the facility and the tribe clear notice of EPA's expectations with respect to progress toward compliance and EPA's timeline for initiating an enforcement action if compliance is not achieved. As such, the compliance plan emphasizes EPA's compliance and enforcement expectations and should help the facility achieve compliance consistent with the Indian Policy and the Enforcement Guidance.

1 **Q:** *When should the Region develop a compliance plan?*

A: Regions should develop a compliance plan as soon as is practicable after non-compliance is identified. The Region should develop and implement the compliance plan in consultation with the affected tribe. In that way, the compliance plan can simultaneously serve as notice to the tribe of the compliance and enforcement issues and an indication of EPA's willingness to work cooperatively to resolve the matter. Therefore, the Region should send a draft compliance plan to the tribal government and the affected facility for review. The Region should provide the tribe with a specific deadline by which to submit comments. If the tribe does not submit comments or otherwise respond to the compliance plan, the Region should notify the tribe that the plan will be implemented as drafted.

12. **Q:** *Should Regions develop compliance plans in all cases of noncompliance involving tribal facilities?*

A. While a compliance plan is generally warranted whenever there is a reasonable expectation of cooperation from the tribe or facility, there are circumstances in which development of a compliance plan would not be effective. For example, a compliance plan may not be appropriate when EPA has consulted with the tribal government and there is a documented history of disinterest in or resistance to EPA's efforts to provide compliance assistance. In addition, a compliance plan may not be appropriate if the Region has previously provided compliance or technical assistance to the facility and EPA believes that additional assistance will not result in a return to compliance (for example, at a drinking water system with the proven ability to perform monitoring and reporting requirements yet repeatedly fails to actually monitor and report, despite EPA assistance). Finally, a compliance plan might not be immediately feasible when exigent circumstances exist and an immediate enforcement action is necessary to address the hazard (see questions 30 - 31, below). If the Region decides not to develop a compliance plan to address a particular tribal facility, they should inform the tribe in writing of that decision and the reasons why a compliance plan may not be an appropriate means to address that noncompliance.

13. **Q:** *What should the compliance plan cover?*

A: Compliance plans vary in length and detail based on the specifics of the situation and nature of the noncompliance. At a minimum, the compliance plan should include the following:

- a description of the noncompliance that EPA identified;
- the nature of the assistance to be provided to the facility and the timeline for providing the assistance;
- the specific steps the facility will take to come into compliance based on the types of activities needed and the milestones associated with the activities; and
- the enforcement response anticipated if the facility's compliance does not improve according to the milestones stated in the plan.

The compliance plan could provide that the Region will discuss with the tribal government whether to pursue prompt enforcement action against the tribal facility if key milestones are missed.

14. **Q:** *Can the compliance plan include assistance provided by another agency?*

A: Yes, where appropriate, EPA should include other federal agencies in its compliance efforts as early as is reasonable under the circumstances. Federal agencies such as the Bureau of Indian Affairs, the Indian Health Service, and the Rural Utility Service have significant resources to assist tribes in protecting human health and the environment. Where another federal agency has provided technical assistance to a tribal facility and has documented the assistance given, EPA may take into account such assistance in drafting and implementing its compliance plan, providing additional compliance assistance as appropriate. In consultation with the tribe, EPA and a tribe may occasionally want to take advantage of compliance assistance resources of state agencies. EPA should document in the case file its contacts with other agencies. The Regional Indian Coordinator can assist with such interagency coordination.

15. **Q:** *What should Regions do if milestones contained in the compliance plan are missed?*

A: The milestones contained in a compliance plan should outline the specific steps the facility will take to come into compliance based on the types of activities needed. Regions should notify the tribe when milestones are missed; if oral notification occurs, the discussion should be memorialized in writing. In addition, Regions should review the missed milestone(s) and decide whether or not it is appropriate to revise the compliance plan and associated milestone(s) or proceed with the outlined enforcement action. Missed milestones are an important indicator of whether or not the facility is able to return to compliance in a timely manner.

16. **Q:** *How do I provide compliance assistance for a violation that is not continuing in nature?*

A: For some types of violations, technical assistance can help a facility achieve and maintain compliance. For example, EPA and other entities may provide hands-on assistance in the operation of a public water supply system over a period of months or even years. For other types

of violations, however, such as dredging and filling wetlands without the necessary permit, EPA may not be able to provide compliance assistance after the fact. In such cases, the Region may be able to provide information on avoiding a repeat violation and may provide technical assistance in planning and carrying out mitigation measures. For example, in the dredging and filling context, EPA generally would provide technical assistance to the tribal facility regarding the development and implementation of a restoration plan or mitigation plan, such as providing information concerning the proper qualifications for the consultants for restoration and/or mitigation work and a timeline for the necessary tasks. This would assist the tribal facility in retaining a consultant and developing appropriate plans for EPA review and approval.

V. What Is an “Enforcement Action” and When Is it Appropriate?

Consistent with the Indian Policy, the Enforcement Guidance, and the protection of human health and the environment, enforcement in Indian country may be an appropriate response to noncompliance.

7. **Q:** *Does the guidance apply in cases where EPA has authorized a tribe to administer the federal program under which the violations occurred?*

A: The Enforcement Guidance does not apply to enforcement actions taken by tribes under tribal codes, including any tribal action under an EPA-authorized program. However, the Enforcement Guidance does apply to all of EPA’s civil enforcement actions in Indian country. Even if the tribe has an approved program in place, EPA maintains jurisdiction and authority to initiate an independent enforcement action to address violations of the requirements of an approved program. Similarly, if the tribe is authorized for a portion of an EPA program but has left the enforcement authority to EPA, the Enforcement Guidance applies to any EPA enforcement.

18. **Q:** *Are actions regarding grants to tribes, such as a cost recovery action under the grant regulations in cases where the tribe did not perform the required grant activities, enforcement actions calling for application of the guidance?*

A: No, the Enforcement Guidance does not apply to either the grant process or any actions taken under the grant regulations.

19. **Q:** *When is enforcement action appropriate against a tribal facility?*

A: Under the Indian Policy, EPA may consider taking an enforcement action against a tribal facility when it determines that (1) a significant threat to human health or the environment exists, (2) the action would reasonably be expected to achieve effective results in a timely manner, and (3) the federal government cannot use other alternatives to correct the problem in a timely fashion.

20. **Q:** *When does EPA demonstrate that it meets the threshold criteria for taking an enforcement action against a tribal facility?*

A: EPA should determine that the threshold criteria have been met before bringing a formal enforcement action against a tribal facility, unless the exigency of the situation requires otherwise. Regions do not need to determine that the three threshold criteria for bringing an enforcement action have been met prior to pursuing informal enforcement actions, such as Notices of Violation or Notices of Noncompliance, which merely request prompt return to compliance.

21. **Q:** *Can a tribe request enforcement action against a tribal facility without full application of the Enforcement Guidance?*

A: Yes, the Enforcement Guidance states that a tribal government “may express the view that EPA should pursue prompt enforcement action against [a tribal] facility as the most appropriate response, without undertaking the cooperative measures and compliance assistance otherwise contemplated by [the] guidance.” In consultation with the tribal government, the Region may determine that it is appropriate to pursue such prompt enforcement. In that case, “the Region should also obtain, and submit to Headquarters as part of the concurrence process, a written statement from the tribal government expressing [the tribal government’s] view that prompt enforcement is appropriate” and conveying the tribal government’s understanding of the nature of the proposed enforcement action, including “the violations that will be alleged, [and] the potential penalty and injunctive relief that will be sought.” The Assistant Administrator for OECA will review and, if appropriate, concur on such requests.

22. **Q:** *What is a “significant threat” to human health or the environment?*

A: A significant threat to human health or the environment can include the direct threat posed by the release or potential release of contaminants into the environment and the exposure of humans or the environment to pollutants, as well as an indirect threat to human health or the environment, such as the threat to the regulatory program and the threat posed by failure to monitor or to maintain proper records. The existence of a significant threat is determined on a case-by-case basis.

23. **Q:** *How does EPA assess whether the federal government may use other alternatives to enforcement against a tribal facility to correct the problem in a timely fashion?*

A: The Enforcement Guidance suggests three factors for EPA to weigh in determining whether it is appropriate to delay enforcement and, instead, consider other alternatives appropriate to the particular circumstances of a case. EPA should consider: (1) the facility’s good faith efforts to remedy noncompliance in a timely manner, including the resources expended; (2) any relevant history of noncompliance with EPA regulatory requirements, including any requirements stated in administrative or judicial orders previously issued to facilities owned, managed, operated, or controlled by the same tribe; and (3) the degree of willfulness.

VI. What is the Process for Obtaining OECA Concurrence for Enforcement Against Tribal Facilities?

24. **Q:** *When should OECA concurrence be obtained for enforcement against a tribal facility?*

A: OECA concurrence should be obtained when:

- EPA is considering a formal enforcement action against a tribal facility, unless exigent circumstances exist;
- an administrative order on consent or other settlement includes penalties;
- an administrative order is issued unilaterally by EPA; and
- an enforcement action or settlement involves issues that OECA has identified as nationally significant.

As set forth in the Enforcement Guidance, OECA will consult with the American Indian Environmental Office and the Office of General Counsel in reviewing regional requests for concurrence. When EPA pursues enforcement action against a tribal facility, it should continue to consult with the tribal government about compliance status as appropriate.

25. **Q:** *When is OECA concurrence NOT needed for enforcement against a tribal facility?*

A: Regions need not obtain OECA concurrence for informal enforcement actions. Informal enforcement actions include actions such as a Notice of Noncompliance or Notice of Violation and show cause orders.

In addition, Regions do not need to obtain OECA concurrence before issuing administrative orders on consent that do not include penalties, or before entering consent agreements filed simultaneously with a complaint and final order where no penalty is sought, as provided in the Consolidated Rules of Practice, 40 C.F.R. Part 22. However, there may be other reasons for OECA concurrence or consultation on these types of actions, such as the existence of issues identified in OECA delegations as nationally significant issues. If regional staff have questions about whether their anticipated enforcement response calls for OECA concurrence, they should contact the tribal coordinator for OECA's Office of Civil Enforcement.

26. **Q:** *Is a field citation or another expedited enforcement response an "enforcement action" calling for OECA concurrence when issued to a tribal facility?*

A: Yes, the Enforcement Guidance calls for OECA concurrence before EPA issues to a tribal facility a field citation or other expedited enforcement response that seeks to collect a penalty.

27. **Q:** *Should OECA concurrence be obtained if the enforcement action does not seek penalties but does include stipulated penalties for future violations at the tribal facility?*

A: No, OECA concurrence need not be obtained for a consent order that includes provisions for stipulated penalties if the order does not seek a civil penalty. However, when stipulated penalties are triggered by failure to comply with the terms of an administrative order on consent, Regions should consult with OECA prior to assessing any penalties.

28. **Q:** *Is OECA concurrence called for with regard to amending an administrative order issued to a tribal facility?*

A: If the amendment to the administrative order is on consent, Regions need not obtain OECA concurrence. If the amendment is issued unilaterally, Regions should obtain OECA concurrence if the amendment significantly changes the nature or scope of requirements in the order.

29. **Q:** *When should the Regions begin discussions with OECA concerning noncompliance at a facility in Indian country?*

A: When addressing issues of noncompliance at tribal facilities, the Region should contact the tribal coordinator for OECA's Office of Civil Enforcement as soon as the Region discerns that compliance assistance alone may not achieve compliance. Regional enforcement personnel should consult with the regional tribal office and the affected tribe upon identification of non-compliance by a tribal facility. Where appropriate, OECA can assist the Region in developing the appropriate measures to resolve the violations, including both compliance assistance and enforcement. Advance notice to OECA will help to ensure that if the Region decides to proceed with an enforcement action, the concurrence process can be completed as expeditiously as possible. Under the guidance, OECA should issue a response within 20 business days of receipt of the concurrence package.

Regions should obtain OECA concurrence before initiating formal civil enforcement action against a tribal facility. However, in exigent circumstances, the Regions may need to act immediately to protect public health or the environment. In exigent situations, the Regions should follow the Enforcement Guidance to the extent practicable and should communicate promptly with the tribal coordinator for OECA's Office of Civil Enforcement and the appropriate tribal government regarding any actions for which prior communication and consultation was not possible. "Exigent circumstances" is discussed further in questions 30 and 31, below.

30. **Q:** *Can EPA conduct emergency actions at tribal facilities?*

A: Yes, EPA has statutory and regulatory authorities to respond to emergency situations where there is an immediate threat to human health or the environment. In exigent circumstances, the Region may need to proceed with emergency enforcement action before it can complete consultation with the tribal government, provide compliance assistance, or obtain OECA concurrence.

For instance, an exigent circumstance may exist where contamination is detected in a public water supply and the water is likely to be ingested. In these circumstances, it may be necessary to immediately issue an order requiring public notices of the contamination, boil orders, and/or bottled water, or it may be necessary to require that the system be shut down. These types of enforcement measures would address the exigent circumstance by preventing ingestion of contaminated water.

Even when addressing exigent circumstances, EPA should contact the tribal government to, at a minimum, alert them to the actions being taken. Formal consultation with the tribe should occur as soon as possible. Agency personnel should follow this guidance and all other applicable procedures to the extent practicable. Enforcement staff should also ensure prompt communication with OECA's tribal coordinator and the affected tribal government regarding any actions for which prior consultation was not possible. For example, where an order is issued within one or two weeks of detecting the threat, the Region will likely only be able to provide notice of the proposed action and a draft copy of the order before it is issued. Where an order is issued within a few days of detecting the threat, the Region should provide copies of the order and supporting documentation as soon as possible.

After the circumstances that prompted the action are addressed, the criteria and procedures of the Enforcement Guidance apply to any subsequent enforcement response at the tribal facility.

31 **Q:** *What is the difference between “imminent and substantial endangerment” and “exigent circumstances,” as used in the Enforcement Guidance?*

A: “Imminent and substantial endangerment” is the threshold set forth in various statutory provisions authorizing EPA to respond to imminent risk of harm. These statutory authorities include RCRA section 7003, SDWA section 1431, and CAA sections 303 and 112(r)(9). These statutory provisions generally authorize EPA to issue administrative orders or proceed in court to require actions to protect human health and the environment. For example, pollutants or contaminants released into a wetland that have not yet harmed aquatic life may present an imminent and substantial endangerment. Similarly, hazardous constituents in an aquifer that may be used as a future source of drinking water may present an imminent and substantial endangerment.

“Exigent circumstances” is used to describe situations requiring an immediate response to protect human health or the environment. For example, exigent circumstances may exist when EPA has detected contamination in a public water supply and the water is likely to be ingested. In exigent circumstances, the emergency nature of the situation may preclude the full application of the guidance before steps are taken to abate the harm. On the other hand, some situations that EPA can address using its imminent and substantial endangerment authorities do not rise to the level of exigent circumstances; for example, groundwater contamination that is slowly moving toward a drinking water source or an open dump that may present a threat of groundwater contamination, combustion, or spread of disease. In those situations, the Region will likely be able to follow the OECA concurrence process before proceeding with an enforcement action.

32. **Q:** *Is the immediate expiration of the statute of limitations an exigent circumstance that warrants immediate action without full application of the Enforcement Guidance?*

A: Yes, the *immediate* expiration of the statute of limitations may warrant action without full application of the Enforcement Guidance. Ideally, Agency personnel will proceed in such a manner that the expiration of the statute of limitations will not be an issue and the process set forth in the Enforcement Guidance can be fully implemented. However, there may be circumstances where the statute of limitations will expire imminently and EPA believes that it can only assure protection of human health or the environment by preserving its legal claims. In any event, the Enforcement Guidance and all other applicable procedures should be followed to the extent practicable. The Regions should ensure prompt communication with OECA's tribal coordinator and the affected tribal government regarding any actions for which prior consultation was not possible.

If imminent expiration of the statute of limitations results in filing an action against a tribal facility before all of the steps identified in the Enforcement Guidance are carried out, EPA should proceed with compliance assistance and full application of the Enforcement Guidance to the extent feasible given the progress of the litigation.

33. **Q:** *Who determines whether exigent circumstances exist?*

A: Typically, the Region makes the determination based on its judgment that exigent circumstances require immediate action and notifies the tribal coordinator in OECA's Office of Civil Enforcement and the tribal government as soon as possible. Where there is time to confer with OECA (rather than just notify) prior to making the determination that an exigent circumstance exists, the Region should do so.

34. **Q:** *What happens after OECA concurs?*

A: Once EPA has determined that it is appropriate to initiate an enforcement action at a tribal facility, the Region should notify the affected tribe of the impending enforcement action. This notification should include the specific action to be taken, including the amount of any penalty and the nature of injunctive relief sought. EPA should proceed with the enforcement action to ensure that the violations are addressed in a timely manner. Consultation with the tribe should continue throughout the enforcement process to the extent it is appropriate and consistent with the tribe's role at the facility. In enforcement matters involving the Department of Justice (DOJ), EPA should coordinate carefully with DOJ to define the scope and manner of communication and consultation with the tribe.

35. **Q:** *What should EPA document in the file when proceeding with an action under the Enforcement Guidance?*

A: Typically, every decision and communication should be documented in the case file. Oral communication with the affected tribal government or facility manager should be memorialized

in writing so EPA has a clear timeline of all steps taken to return the facility to compliance. Correspondence with the facility manager concerning noncompliance should be copied to the affected tribal government.

VII. Other Questions Concerning Tribal Facilities

36. **Q:** *Does the Enforcement Guidance apply to federal facilities?*

A: The Enforcement Guidance only applies if a federal facility also qualifies as a tribal facility. Where a federal facility is not a tribal facility, EPA will address noncompliance at federal facilities in Indian country in the same manner as with federal facilities not located in Indian country. Where a federal facility is also a tribal facility, such as a school established by the Bureau of Indian Affairs but managed or operated by a tribe, the Enforcement Guidance applies, including consultation with the affected tribe regarding appropriate responses to violations at the facility. Regions may also consult EPA guidance for addressing federal facility noncompliance, including "The Yellow Book: Guide to Environmental Enforcement and Compliance at Federal Facilities," February 1999.

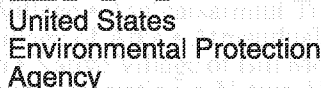
[Http://www.epa.gov/compliance/resources/publications/civil/federal/yellowbk.pdf](http://www.epa.gov/compliance/resources/publications/civil/federal/yellowbk.pdf).

37. **Q:** *With whom should EPA consult when working with a tribe?*

A: In consultations concerning tribal interest in a facility and non-compliance at tribal facilities, EPA should consult with the head of the affected tribal government, such as the tribal chair, or the duly-designated representatives, in a timely manner. If the tribe has delegated the authority to work with EPA on environmental compliance to a tribal agency, committee, or individual, then EPA should document that delegation in the case file and consult with that agency or official as the primary tribal official. Designation of the contact for both EPA and the tribe should occur as early as possible in the process so as to avoid confusion.

38. **Q:** *When consulting with a tribe pursuant to the Enforcement Guidance, how does EPA address concerns about the release of confidential information [i.e., confidential business information, enforcement confidential information, or communications otherwise not releasable under the Freedom of Information Act (FOIA)]?*

A: EPA should protect confidential information during tribal consultation, whether internal Agency communications or communications with a private party involved in the enforcement action. Accordingly, EPA should consult with tribes to the greatest extent practicable without divulging privileged or confidential information. In certain cases, for example, enforcement actions brought jointly by EPA and the tribe, EPA has entered into special arrangements to share information. If such an arrangement is needed, staff should consult their regional attorneys. In addition, tribal inspectors who are authorized to conduct Clean Air Act inspections on behalf of EPA do have access to confidential business information obtained from the facility being inspected. However, internal Agency communications and documents in an enforcement action would still be withheld as enforcement confidential.



EPA Region 10 Tribal Consultation And Coordination Procedures

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Purpose and Scope of This Document

EPA's policy is to consult on a government-to-government basis with federally recognized tribal governments when EPA actions and decisions may affect tribal interests. The EPA Policy on Consultation and Coordination with Indian Tribes (May 4, 2011) establishes national guidelines and institutional controls for consultation across EPA. These Region 10 Tribal Consultation Procedures (Procedures) are consistent with the agency-wide consultation policy, but include more specific guidelines for the consultation process to meet the needs and practices of tribes in EPA Region 10 (Region 10).

These Procedures apply to Region 10 interactions with federally recognized tribes (tribes) in Washington, Oregon, Idaho and Alaska.¹ The U.S. Bureau of Indian Affairs maintains and periodically updates and publishes a list of all federally recognized tribes.² Whenever questions arise regarding consultation with other entities, such as Alaska Native Corporations, tribal consortia, or other organizations representing or consisting of tribes or tribal members, the Region 10 Tribal Consultation Specialist should be contacted.

These Procedures supersede the 2001 EPA Region 10 Consultation Framework, as well as all Region 10 individual program, sector, and unit/team consultation procedures, except for the Region 10 Enforcement Procedures in Indian Country. These Procedures do not supersede any EPA agency-wide consultation policies or procedures, or those developed by individual tribes, nor does it replace individual EPA-tribal memoranda of agreement, consultation plans, Tribal Environmental Agreements (TEAs), or other specific agreements between Region 10 and a tribe or tribes.³ Finally, these Procedures do not apply to Region 10 civil enforcement or compliance assurance activities.⁴ Emergency response activities are addressed separately in Appendix A.

A large number of routine administrative and staff-to-staff level interactions and communications occur between EPA and tribal government employees on a regular basis. These Procedures do not apply to these regular, ongoing interactions. These Procedures are not intended to cover the large number of routine interactions between funding recipients and EPA staff. Again, consult with the Region 10 Tribal Consultation Specialist for further guidance.

While this document describes the procedures that Region 10 expects to follow in consulting with federally recognized tribes, it does not alter or create any legal rights or obligations. Also, the possible circumstances where consultation might be appropriate are so varied that these Procedures can not anticipate every scenario; thus there may be situations for which these Procedures do not apply or are not appropriate, and the general ideas contained here will need to be applied flexibly.

1 These Procedures do not apply to consultations initiated by EPA Headquarters' Offices.

2 The most current list is at 77 Fed. Reg. 47868 (August 10, 2012)

3 Other types of agreements could include cooperative agreements and/or an Administrative Order on Consent for Remedial Investigation/Feasibility Study under the Comprehensive Environmental Response, Compensation, and Liability Act (Superfund), which may describe tribal consultation procedures for that particular project.

4 Primary guidance on civil enforcement matters involving tribes can be found in EPA's "Guidance on the Enforcement Priorities Outlined in the 1984 Indian Policy," "Questions and Answers on the Tribal Enforcement Process" and the Region 10 Enforcement Procedures in Indian Country.

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I. Why Region 10 Consults

Meaningful tribal consultation is an integral component of the federal government's general trust relationship with federally recognized tribes. The federal government recognizes the right of each tribe to self-government, with sovereign powers over their members and their territory. Executive Order 13175 (November 9, 2000) directs federal agencies to establish and implement processes to ensure meaningful and timely input by tribal officials in the development of policies that have tribal implications.

The EPA has a longstanding policy that supports tribal involvement in decision-making. In EPA's landmark 1984 Indian Policy,⁵ the Agency stated that the keynote of EPA's efforts to protect human health and the environment "will be to give special consideration to tribal interests in making Agency policy, and to insure the close involvement of Tribal Governments in making decisions and managing environmental programs" that affect them. That policy has been reaffirmed by each administration's EPA administrator since then, including the present EPA Administrator, Lisa P. Jackson, in 2009.⁶

II. What is Consultation

A. Definition of Tribal Consultation

The EPA Policy on Consultation and Coordination with Indian Tribes provides the following definition:

Consultation is a process of meaningful communication and coordination between EPA and tribal officials prior to EPA taking actions or implementing decisions that may affect tribes. As a process, consultation includes several methods of interaction that may occur at different levels. The appropriate level of interaction is determined by past and current practices, adjustments made through this Policy, the continuing dialogue between EPA and tribal governments, and program and regional procedures and plans.

In many circumstances, planned and structured meetings between EPA and tribal leaders are an essential part of the consultation process. For purposes of clarity and to avoid miscommunication, this document will refer to those meetings as "leadership meetings." Many tribes in Region 10 use the term "government-to-government consultation" to refer only to leadership meetings.

Consultation includes seeking, discussing, and considering the views of federally recognized tribal governments regarding a Region 10 action or decision. Consultation consists of respectful, meaningful, and effective two-way communication, in an effort to achieve mutual understanding between EPA and the Tribe of their respective interests and perspectives, before EPA makes its decision or moves forward with its action.

5 EPA Policy for the Administration of Environmental Programs on Indian Reservations (November 8, 1984).

6 Memorandum: EPA Indian Policy (July 22, 2009).

The process of effective tribal consultation may include a wide range of communication over the course of developing an EPA action or decision. This communication can include meetings, telephone conferences, or internet-based communication to exchange technical information at the staff or management level, discussions to establish effective processes for coordination and planning, formal structured meetings between EPA and tribal leaders, or a wide range of other communication in person or by e-mail, telephone or letter.

B. Consultation and the Public Participation Process

Tribal consultation is distinct from the EPA public participation and community involvement processes. Tribal consultation should occur before any EPA public meeting or workshop, to offer EPA the opportunity to consider input from interested tribal governments prior to seeking public comment.

A tribe may benefit from participating in the EPA public participation and community involvement processes, separate and apart from any consultation. A tribe may choose to submit oral and written comments into the public record during the public comment period. This may be necessary for the tribe to preserve its appeal rights, or to preserve a particular issue for appeal. It may be helpful to discuss these specific issues with the tribe when planning the consultation.

Additionally, a tribe may choose to hold its own community or member meetings to discuss EPA's action. The tribe may invite EPA to participate in these meetings or it may choose to meet privately with its tribal community or membership.

III. Who in Region 10 is Responsible For Planning, Supporting, and Conducting Tribal Consultation

A. Roles and Responsibilities

The **Regional Administrator** oversees the consultation process in Region 10. The Regional Administrator and **Deputy Regional Administrator** are the top EPA officials for Region 10. The Region 10 **Office Directors** report directly to the Regional Administrator, and are members of the Executive Team. The Office Directors carry out major EPA program activities. The Office Directors are responsible for ensuring that the appropriate staff are aware of tribal consultation responsibilities and procedures, and that the procedures are carried out for actions, decisions, projects, and similar activities carried out by their office.

The Region 10 **Senior Tribal Policy Advisor (STPA)** reports directly to the Regional Administrator, and is a member of the Executive Team. The STPA works with EPA senior managers and staff to ensure effective government-to-government relations with Tribes, in accordance with EPA's consultation policy and practices. The STPA provides advice on effective communication with Tribes and advises EPA senior management on and/or participates in tribal consultations. Where there are significant tribal issues or a high degree of tribal interest, particularly where the Regional Administrator or Deputy Regional Administrator is or may be engaged personally, the STPA may be involved. The STPA involvement with consultation

is in coordination with the Regional Administrator, Deputy Regional Administrator, or Office Directors. Contact information for the STPA is available at <http://yosemite.epa.gov/R10/tribal.NSF/webpage/tribal+contacts>.

The individual with primary responsibility for the EPA activity or action (“**EPA Project Lead**”), such as a project manager, permit writer, contingency planner, or on-scene coordinator, ordinarily has the primary responsibility for the consultation process. Others within the Region are involved or can support the consultation process; their roles are described here. The first two listed below, the program-specific Tribal Specialist and the Region 10 Tribal Consultation Specialist, are the Project Lead’s initial points of contact for all tribal consultation support or related questions.

Each Region 10 Office has a **Tribal Specialist**, who serves as the main point of contact, and source of information and support, for tribal work within each program office. *The Project Leads should inform the Tribal Specialist of any activities that may affect tribes.* The Tribal Specialist is the first source of information about what steps to take, and what other resources or staff are available to provide support, or should be informed. A list of Tribal Specialists is available at <http://yosemite.epa.gov/R10/tribal.NSF/programs/tribal+specialists>.

The Region 10 **Tribal Consultation Specialist**, located in the Tribal Trust and Assistance Unit (TTAU), Office of Ecosystems, Tribal and Public Affairs, is responsible for supporting tribal consultation across the Region. *Project Leads should inform the Tribal Consultation Specialist of all tribal consultations*, and should seek his or her advice regarding whether, when, and how to consult in a given situation. Contact information for the Tribal Consultation Specialist is available at <http://yosemite.epa.gov/R10/tribal.NSF/webpage/tribal+contacts>.

The Region 10 **Tribal Coordinators**, in TTAU, serve as liaisons between EPA and the tribes, and also as project officers for certain grant programs that involve tribes. There is a Tribal Coordinator assigned to each tribe in Region 10. The Tribal Coordinators are generally familiar with each tribe’s environmental concerns, political structure, and relationship with EPA. The appropriate Tribal Coordinator should be aware of, and often will assist with, the consultation process, and can be an invaluable resource because of his or her familiarity with each tribe. The Tribal Consultation Specialist will involve Tribal Coordinators when appropriate. A list of Tribal Coordinators is available at <http://yosemite.epa.gov/R10/tribal.NSF/webpage/tribal+coordinators>.

The Region 10 **Alaska Resource Extraction Tribal Policy Advisor**, in the Alaska Operations Office, coordinates tribal consultation and community involvement for Alaska resource extraction projects. The Alaska Resource Extraction Tribal Policy Advisor often will work closely with the Project Lead on tribal consultation involving large scale resource extraction projects that involve multiple Alaska tribes. Contact information for the Alaska Resource Extraction Tribal Policy Advisor is available at <http://yosemite.epa.gov/R10/tribal.NSF/webpage/tribal+contacts>.

The Region 10 **Office of Regional Counsel** (ORC) should be consulted when questions arise over application of federal Indian law or EPA policies, potential liability of a tribe under an environmental statute, tribal jurisdiction or authority, Indian country boundaries, or other related legal issues. If a tribal government plans to have an attorney present at any interaction with the Region, ORC should be notified. Contact information for the ORC is available at <http://www.epa.gov/ogc/regional.htm>.

B. Region 10 Representation for Tribal Consultation

The main point of contact for EPA during the course of the consultation is ordinarily EPA's Project Lead. During any leadership meeting, a senior EPA official, usually the Regional Administrator, Deputy Regional Administrator, an Office Director, or one of their Deputies, should be designated to represent EPA. Where there are significant tribal issues or a high degree of tribal interest, particularly where the Regional Administrator or Deputy Regional Administrator is or may be engaged personally, the STPA may be involved. The appropriate EPA official for a leadership meeting depends on who within Region 10 is delegated the authority to make the decision or take the action in question, and also on the level of representation on the tribe's part. Often if a tribal chair participates personally, the tribe will expect EPA to be represented by the Regional Administrator, but this can depend on a number of factors including available resources, schedules, and the stage of the EPA action (for example, early in a process, tribal officials may be satisfied with, or prefer, meeting with EPA technical or program staff).

IV. Identifying Activities Appropriate for Consultation

The Region should consult with a tribe when making decisions, taking actions, managing projects, or engaging in similar activities, when the tribe's interests might be affected. The Project Lead should seek the advice of the Regional Tribal Consultation Specialist and the Project Lead's Unit Manager and/or Office Director to determine whether a given EPA activity warrants consultation in view of the following considerations.

A. Types of Activities That May Be Appropriate for Consultation

The broad scope of consultation contemplated by the EPA Policy on Consultation and Coordination with Indian Tribes and the Region 10 Procedures creates a large number of actions that may be appropriate for consultation.

The following list of Region 10 activities are normally appropriate for consultation if they may affect tribes:

- Regulations or rules
- Policies, guidance documents, directives
- Permits
- Civil enforcement and compliance monitoring actions⁷
- Response actions and emergency preparedness⁸
- National Priority Listing and deferral decisions
- State or tribal authorizations or delegations
- Designation of disposal sites
- EPA activities in implementation of U.S. obligations under an international or tribal treaty or agreement

⁷ Primary guidance on civil enforcement matters involving tribes can be found in EPA's "Guidance on the Enforcement Priorities Outlined in the 1984 Indian Policy," "Questions and Answers on Tribal Enforcement Process" and the Region 10 Enforcement Procedures in Indian Country.

⁸ The term "response" as defined under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) includes removal and remedial actions. For EPA Region 10 Emergency Response Tribal Consultation Procedures see Appendix A.

State Actions. When requested, Region 10 generally will agree to consult with a tribe on state-led actions where Region 10 has the ability to change or veto the state action and the proposed action has the potential to affect that tribe's interests. EPA's approach will be to work with both the tribe and state to address potential effects on tribal interests. EPA will take tribal concerns and impacts into account in its exercise of any oversight authority.

Other Federal Agency Actions. In some circumstances, EPA has a secondary or oversight role in actions or decisions by other federal agencies. Three examples (out of many more possibilities) are (1) federal actions that require Environmental Impact Statements, which EPA reviews and comments on under Clean Air Act Section 309 and related regulations, (2) permits issued by the U.S. Army Corps of Engineers under Clean Water Act Section 404, which EPA may review, and (3) some cleanup actions by other federal agencies under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). In such circumstances, EPA would encourage a tribe seeking to consult with the United States to work directly with the federal agency with the most direct responsibility for the action or decision in question. However, EPA would consider a tribe's request to consult with EPA based on the specific circumstances, including the extent of EPA's active involvement or influence in the decision or action, whether EPA has a range of options or discretion in connection with its role, and whether EPA involvement would contribute significantly to the tribe's direct consultation with the other federal agency or agencies involved.

B. Whether Tribal Interests Are Affected

At the beginning of a proposed project or action, the Project Lead should make an initial determination whether the interests of one or more tribes may be affected by the action, taking into account the following considerations:

Geographic Considerations

- Action on or adjacent to Indian Country or an Alaska Native Village, or nearby (such as within the same airshed or watershed) if the action may affect a tribe's health, resources, rights, or traditional way of life
- Action within the "usual and accustomed areas"⁹ of a federally recognized tribe that may affect a tribe's resources, rights, or traditional way of life

Tribal Resources

- Action that may affect the treaty-reserved resources of a tribe
- Action that may affect the public health in the tribal community
- Action that may affect the cultural, traditional, or subsistence resources of a tribe or a tribe's traditional way of life

Tribal Ownership

- Action related to a facility owned or managed by a tribal government

⁹ In some cases, tribes not only hold reserved fishing, hunting and gathering rights within reservation areas but also retain rights in ceded territories that were their "usual and accustomed" hunting, fishing or gathering places. Within EPA Region 10, these rights are incorporated into the treaties of most tribes.

The Project Lead may review maps of federally recognized tribal government locations, Indian Country,¹⁰ Alaska Native Village locations, “usual and accustomed” areas, watersheds of interest, and Indian Claims Commission maps¹¹ to assist in the initial determination of whether one or more tribes’ interests might be affected by the action. Some of this data will be available in EPA’s Interactive Tribal Mapping Tool for Region 10 personnel, which will allow Region 10 personnel to see which tribes, or tribal areas of interest, are near to a proposed project or action location. The appropriate Tribal Coordinator can assist with these resources.

The Project Lead should not rely solely on maps to assess whether a tribe’s interests might be affected by an EPA action because most traditional use areas of Region 10 tribes are not mapped. For example, a tribal family’s berry picking, hunting or fishing areas may not be well known to others, especially outside of the tribe. The Tribal Coordinator assigned to that particular tribe or region can help with these issues. The Tribal Coordinator or Project Lead may call tribal environmental staff to gauge tribal interest, but note that this coordination with a tribe does not take the place of an offer to consult.

V. Timing of Consultation

To make sure that consultation is meaningful and timely requires communication early enough to potentially affect the action or decision, or the data collection associated with it. This will often involve notifying a tribe of an expected action or decision, providing information about the decision to the tribe, discussing major policy and environmental considerations, and exchanging information and viewpoints at a program and technical level.

It will often be important to provide an opportunity for similar communication far enough along in the process that EPA can provide significant detail about the decision or action the Region is considering. In some cases there is a single time period when both of these objectives can be achieved; in other cases, it may be necessary to consult early in the Region’s process, and then consult again at a later point when the EPA action is more developed. The ideal approach is to have active communication throughout the data gathering and decision process about the scope and nature of consultation that the tribe desires.

The timing of tribal elections and fishing, hunting and gathering seasons, etc., is important to consider in timing a consultation. Contact the Tribal Coordinators for more information. The North Slope Protocol is a great resource for this information in Alaska.

10 In 1948 Congress codified the definition of “Indian Country”... as (a) all land within the limits of any Indian reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation, (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of the state, and (c) all Indian allotments, the Indian titles to which have not been extinguished including the rights-of-way running through the same (18 U.S.C § 1151).

11 See USGS Website at <http://rockyweb.cr.usgs.gov/outreach/lewisclark/indianlandsmaps.html>

VI. How Region 10 Consults

A. Initiation by EPA

1. EPA Offer to Consult

Once the Region 10 Project Lead determines that consultation is warranted, EPA should send a letter to the appropriate tribe offering to consult. The Region 10 Project Lead should draft the letter, and can seek input from the Region 10 Tribal Consultation Specialist, and program-specific Tribal Specialist, who can also provide sample letters. The letter should:

- Be addressed to the Tribal Leader (eg. Tribal Chair, Tribal President, or First Chief), with a copy to the tribe's environmental program staff, and the EPA Tribal Coordinator
- Be signed by an Office Director or the Regional Administrator
- Describe the issue at hand clearly, avoiding or clearly defining legal and technical terms and acronyms
- Describe the upcoming EPA action or decision
- Include maps, technical data, and other explanatory or supporting information as appropriate and available
- Relay process timelines and schedule considerations
- Identify the Project Lead, who will work with the tribe to arrange all aspects of the consultation
- Request that the tribe respond to the Project Lead, indicating whether or not the tribe intends on pursuing consultation
- Request response by a date that allows adequate time for a tribal council meeting or other internal deliberations by the tribe (typically four weeks from receipt of letter)
- Request that the tribe provide the name of a tribal representative who will serve as the point of contact for planning the consultation, if the tribe wishes to go forward with consultation
- Request any policy that the tribe may have regarding EPA consultation with them
- Identify or propose timeframes for starting and ending consultation.

Whenever possible and depending on timing and number of tribes involved, the Project Lead should follow up with a phone call, e-mail, or fax to the tribal environmental program or department (or other appropriate tribal department) to ensure receipt of the letter and to open dialogue about the potential consultation.

2. If a Tribe Declines

If a tribe indicates it does not want to consult on a given matter, EPA consultation efforts are normally concluded. The best practice is to document this in the case or project file and inform the Region 10 Tribal Consultation Specialist for tracking purposes. This does not relieve Region 10 of any general trust responsibility it may have to consider the interests of the tribe.

3. If a Tribe Does Not Respond

If a tribe does not respond by the date provided in the consultation invitation letter, when working with one or a small number of tribes, the EPA Project Lead should work with the Tribal Coordinator to reach out to the tribe, usually through e-mails and phone calls to the tribal environmental department. If there is still no response from the tribe, this should be documented in the file and reported to the Regional Tribal Consultation Specialist, and would normally conclude the Region's efforts to initiate consultation. This would not relieve Region 10 of any general trust responsibility to consider the interests of the tribe.

Where EPA offers to consult with a large number of tribes, the Region may, in addition to sending the initial invitation to consult, send e-mails and publicize the consultation opportunity in appropriate publications and at relevant forums. It may be impractical for Region 10 to follow up with individual phone calls or letters to all the tribes.

B. Initiation by a Tribe

Region 10 generally will agree to consult when a tribe requests it, assuming the potential action or decision could affect that tribe's interests. When EPA receives a written request from a tribal leader, the letter should be forwarded to the appropriate program office, which should acknowledge the receipt of the letter or request within two weeks and should respond to the letter in a reasonable time. The Project Lead should notify appropriate personnel in their own office, including their office Tribal Specialist, as well as the Region 10 Tribal Consultation Specialist, who will enter information about leadership meetings in the Region's consultation database.

If it is unclear which program office should take the lead on a consultation request, the request should be forwarded to Regional Administrator's Office for a decision. The response letter from EPA should designate a point of contact to work with the tribe, and request that the tribe identify a tribal point of contact, to arrange the consultation.

C. Planning the Consultation Process

Each tribe has its own governmental structure, and exercises sovereign powers over its members and territories. For that reason, there is no "one size fits all" consultation process template. Consultation is most effective when the approach is individualized to the particular tribe and EPA action. The EPA and tribal points of contact should work together in order to develop a mutually acceptable approach to planning, preparing for, and implementing the consultation process. The points of contact should work closely with one another, while at the same time communicating with their own leadership to ensure support for the developing approach.

The EPA and tribal points of contact should address the following issues of the consultation:

1. Goals and Expectations of each Party

The EPA and tribal points of contact should work with their respective leadership to identify each party's goals and expectations, and to determine how to structure the consultation process to address those goals and expectations.

2. Consultation Policies and Procedures

The points of contact should discuss whether the tribe has developed its own consultation policy or procedures. Any tribally developed consultation policies or procedures should be incorporated into the consultation planning and implementation, where appropriate.

In addition to the EPA Policy on Consultation and Coordination with Indian Tribes, there may be program-specific national EPA tribal consultation guidance. (For example, the Office of Air Quality Planning and Standards developed “Consulting with Indian Tribal Governments” in 2009.) Project Leads should contact their respective headquarters offices to determine if such a policy exists, and, if so, should incorporate those procedures into the consultation process.

3. Identification of Authorized Tribal Official

The Project Lead should work with the tribe to specify who will represent each party at each point during the consultation process. It is important to verify that the specified tribal representative is authorized to represent the tribe for the purposes of consultation, to avoid misunderstandings that can arise from dealing with consultants, attorneys, or tribal staff members who may be communicating with EPA without the authority to represent the tribe as a whole.

4. Scope and Number of Meetings

The EPA and tribal points of contact should determine whether the consultation topics can be covered in a single meeting or whether the consultation topics will require a series of meetings, possibly including technical exchange meetings and one or more leadership meetings.

5. Consultation Plan Format

The parties should discuss whether a written consultation plan is needed, or a more formal Memorandum of Understanding (MOU), or whether verbal/email planning will suffice. It may be appropriate to develop a MOU for particularly complex consultations, such as those involving multiple federal agencies, tribes, legal authorities, decision points, and/or regulatory processes. ORC must be involved in the development of any MOU.

6. Setting the Leadership Meeting Date and Location

The points of contact should begin setting the meeting date(s) at the earliest opportunity, as it may take weeks of planning to align calendars of the appropriate participants with the schedule for the EPA action or decision. Timing of meetings will need to take into account EPA’s calendar and a tribe’s administrative, subsistence, commercial fishing, and cultural events calendars. Leadership meetings should be held face-to-face whenever possible, preferably on tribal homelands. If travel money or time constraints make such a visit impossible, the parties may agree to meet via video or telephone conference. See Section D.3 below for more information on leadership meetings.

7. Information Exchange

The points of contact should discuss in detail what information each party will need for effective consultation. Both EPA and the tribe may have technical or factual information relevant to the consultation. This information should be shared between the parties, whenever possible.

8. Consultation Facilitation

The EPA and tribal points of contact should discuss and agree on whether there will be facilitation for any meetings during the course of the consultation. The parties may decide upon someone from their respective staffs, often the EPA Tribal Coordinator, or may choose to hire an independent third party, if resources allow. If the parties elect to forgo a facilitator, it is important to pay particular attention to potentially different communication styles.

D. Conducting the Consultation

1. Information Exchange and Open Communication

Consultation shall be conducted in good faith and in a climate of mutual respect. Region 10 staff should work hard to understand the tribe's priorities, perspective, and constraints, and to explain EPA's. EPA should make a concerted effort to identify solutions that do not negatively impact a tribe's rights, resources and interests. The Project Lead should understand and comply with any U.S.-tribe agreements (treaties, MOA's) when identifying and evaluating decision alternatives. The Project Lead should also apply the policy goals of the 1984 EPA Indian Policy.

Most tribe-EPA communication during the consultation process takes the form of information sharing, technical discussion, and joint planning, and involves staff and management of both EPA and a tribe. EPA should timely and efficiently disseminate relevant information to tribes and should seek a reciprocal timely receipt of information from tribes. This is a critical part of the consultation process in most cases. The tribe and EPA may wish to designate technical points of contact to discuss data and findings in advance of the leadership meeting. When EPA and a tribe are effectively communicating and coordinating in an early, meaningful way, conflict is reduced or avoided, and in some cases a tribe may feel its interests have been met without the need for further consultation at the leadership level. In other cases, this will serve as an important preliminary step to a productive leadership meeting.

There may be situations where a tribe lacks the resources to conduct a technical or legal review. Depending on the degree of tribal interest, and practical considerations such as timing and resources, it may be beneficial to provide an additional technical meeting or workshop where information can be exchanged. The EPA Project Lead should help identify the various decision points and potential topics or issues that may be of particular interest to the tribe. For example, in the development of a permit there may be technical support documents created that assist EPA in making decisions. The tribe may wish to have a workshop about the technical support document so that input can be provided and the parameters of EPA's authority can be best understood.

Sometimes, it is difficult for EPA to meet tribal expectations, especially when EPA lacks the discretion or authority to fully resolve all tribal concerns. EPA's authority is often subject to specific statutory and regulatory limitations, and the extent with which it can address tribal expectations will vary on a case-by-case basis. Clarifying these issues in the consultation process can be very helpful.

2. Sensitive Information, Record-Keeping and Freedom of Information Act

It is important to promote full and frank exchange of views during government-to-government consultation with tribes. These interactions may include discussions relating to issues of unique sensitivity to tribes such as cultural practices, uses of environmental resources,

and locations of cultural resources. There may also be sensitivity regarding tribal relationships with surrounding states and jurisdictional issues. In preparing any records memorializing consultations with tribes, the EPA Project Lead should consider these potential sensitivities in determining the level of detail to include. The EPA Project Lead should also consider and discuss with tribes the fact that written records of consultations, or other documents exchanged between EPA and Tribes during the consultation and coordination, ordinarily will not be privileged or otherwise protected from disclosure under FOIA. For advice on specific situations, please consult the Office of Regional Counsel.

3. Leadership Meeting

It will often be appropriate to offer to meet with a tribe at the leadership level when EPA anticipates or proposes an action that may affect a tribe. The Project Lead should seek the Region 10 Tribal Consultation Specialist's advice regarding leadership meetings. The executive leadership of EPA and the tribal government officials may have one or more meetings. The tribal and EPA points of contact should discuss and agree on the arrangements and expectations, including the agenda, for each leadership meeting in advance of the meeting. Generally, the agenda should include:

- Introductions
- Statement of meeting purpose, including identification of EPA action or decision.
- Statements from each party, usually focused on goals and expectations for the consultation
- Presentation of information, both from EPA and the tribe
- Discussion and input
- Identification of next steps

The EPA and tribal points of contact should summarize these arrangements and expectations for the leadership meeting in writing, such as in an e-mail message or a letter, depending on the level of formality appropriate under the circumstances. It is also usually advisable to send a letter to the tribe after the leadership meeting summarizing the key issues discussed and addressing any follow-up tasks.

4. Consulting with Multiple Tribes

When offering to consult with a large group of tribes or all tribes in Region 10, a letter should be sent to each tribe. The most feasible approach may be to carry out the consultations in a hub (centralized) location or through conference calls and webinars, depending on practical considerations such as the number and location of the tribes involved, the facilities, and other resources available. Hub consultations normally are arranged in areas that can accommodate a large meeting and are central to the maximum number of tribes, and where tribes have expressed interest, to the extent practical. In multiple party consultation, it is important for EPA to know who the designated tribal representative is for each tribal government participating. If the consultation involves a large number of tribes or all tribes within the Region, a lead EPA Tribal Coordinator may be appointed to coordinate work with the program. It is important to discuss these issues with each tribe involved, as referenced in Section VI.C, to ensure mutual understanding about the consultation process, particularly if one or more Tribes request individual government-to-government consultation.

5. Telephone Conferences

As described in Section VI.C, if it is determined that the most feasible approach for a consultation is through a telephone conference, participants should take extra care to ensure the consultation retains appropriate protocol. Consultation by telephone can present communication challenges such as determining when someone wishes to speak and inability to read body language. It is important to allow periods of silence to ensure tribal participants have the opportunity to speak. It is also helpful to have the facilitator stop occasionally and ask if anyone has points or questions they would like clarified or addressed.

6. Visit to Tribe

If the consultation will involve a visit by EPA to a tribe, the EPA and tribal points of contact should consider building other activities, in addition to the consultation, into the visit. The tribe may wish to host a tour of environmental sites and projects for EPA representatives. Other options may include working with the tribe to host a public meeting or workshop, visiting the tribe's cultural center or museum, or meeting with traditional tribal leaders and elders. If possible, such activities should be scheduled before the consultation.

7. Coordination with Other Federal Agencies

EPA should actively seek opportunities to conduct tribal consultations jointly with other federal agencies when EPA and one or more other federal agencies have related actions that affect tribal interests. This type of federal partnership could reduce the burden on a tribe and may also result in improved protection of human health and the environment. Discussion with state or local agencies may be appropriate if they have related actions, but they are not part of the federal consultation process; their involvement should be discussed with the tribe in advance of any meeting. Tribes are generally entitled to meet with federal government representatives only, if that is their preference.

8. Including the Public, the Media, or Other Participants in Tribal Consultation

Participation and attendance at EPA-tribe consultation meetings is generally limited to the representatives of EPA and the tribe. Consultants employed by EPA or the tribe, or third parties such as intertribal organizations, tribal consortia, environmental or non-profit organizations, or state or local governments, may be included as long as there is no objection from either side. EPA and the tribe may agree to grant a party "observer status" where that party can listen to the proceedings but not participate, to provide the third party an opportunity to better understand EPA and tribal issues and priorities. Media are excluded from consultation unless both parties agree prior to the consultation.

9. Translation and Recording

There may be instances within Region 10 when a translator may be required for meaningful consultation. It is important to discuss the need for a translator ahead of the meeting. It is also important to discuss in advance whether either party intends to record any meetings (in person or telephonic).

E. Required Follow-Up and Reporting

In accordance to the EPA Policy on Consultation and Coordination with Indian Tribes, Region 10 will provide feedback to the tribe(s) involved in the consultation to explain how their input was considered in the final action. This feedback should be a formal, written communication from a senior EPA official involved to the most senior tribal official involved in the consultation. Each individual that participated in the consultation should receive a copy of this communication, as should the Region 10 Tribal Consultation Specialist for purposes of consultation tracking requirements.

Region 10 must develop a semi-annual agenda and submit the Agenda or an update to EPA's American Indian Environmental Office (AIEO) by October 1st and April 1st of each year. The semi-annual agenda consists of a list of pre-identified activities that Region 10 plans to consult upon in the future. Submission of the Agenda is satisfied by entering the relevant information in the Tribal Consultation Opportunities Tracking System (TCOTS, <http://yosemite.epa.gov/oia/TCConsultation.nsf/TC?OpenView>). TCOTS requires the entry of a small set of standardized information used to track the consultation including a start and end date and the primary point-of-contact. The information provided is used as the basis for posting consultation information outside EPA for tribes and the public. In addition, Region 10 is responsible for submitting brief summaries of completed consultations to AIEO as soon as practicable once consultation is complete. The Region 10 Tribal Consultation Specialist is responsible for tracking and inputting required consultation information into TCOTS. Please contact the Region 10 Tribal Consultation Specialist for additional information on reporting requirements.

VII. Historic or Archaeological Resources

Where a federal action might affect historical or archaeological resources, there are a number of laws and procedural requirements that might be triggered, including the American Antiquities Act of 1906, the Historic Sites, Buildings, Objects, and Antiquities Act of 1935, the National Historic Preservation Act of 1966, and the Native American Graves Protection and Repatriation Act of 1990. These laws contain a number of requirements, some of which are very detailed, and may overlap with these tribal consultation procedures and/or the National Environmental Policy Act (NEPA). Often the NEPA process will involve an initial screening as to whether any historical or archaeological resources might be impacted. When working on a project that might involve any resources of this nature, it is very important to consult with ORC to determine whether tribal consultation needs to be coordinated with any additional procedures related to resources protected by law.

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Appendix A

EPA Region 10 Emergency Response Tribal Consultation Procedures

The EPA Region 10 Emergency Management Program (EMP) within the Office of Environmental Cleanup (ECL) is responsible for a range of assessment and cleanup actions that vary in their duration, complexity and time-critical nature. These actions may be in response to oil or chemical spills, as well as to natural and man-made disasters. Cleanups, such as Removal Actions, may be considered non-time critical, time-critical, or emergency response in nature. The urgency and dynamics of a Removal Action may affect EPA's ability to fully implement all four phases of tribal consultation described in EPA policy (identification, notification, input, and follow-up).

Non-Time Critical Removal Actions

Non-time critical removal actions, which may be conducted or overseen by either Federal On-Scene Coordinators or EPA Region 10's Remedial Cleanup Program, generally allow for at least a 6-month planning period prior to the initiation of cleanup activities on scene. Non-time critical removal actions require an engineering evaluation and cost analysis (EE/CA) to evaluate the cleanup action alternatives being considered. A decision document (Action Memorandum) is subsequently developed to document the selection of the cleanup activity. Given the pace of the non-time critical cleanup activity, Region 10 generally should fully implement the EPA Region 10 Tribal Consultation Procedures when EPA actions or decisions may affect tribal interests. In particular, EPA should provide opportunities to consult during or before the public comment period and prior to issuing the Action Memorandum.

Time-Critical Removal Actions

For time-critical removal actions, an EE/CA and public comment period is not required but an Action Memorandum is still developed to document the cleanup decision, in most cases prior to a cleanup activity taking place. For time-critical removal actions, EPA staff should coordinate closely with Tribal environmental staff. To ensure that Tribal leadership are also informed of these cleanup activities, EPA should offer formal consultation directly to Tribal leadership prior to approval of the Action Memorandum, whenever time allows. In some cases, EPA may need to approve of the Action Memorandum and commence cleanup activities without delay and in those cases, formal consultation should be offered as soon as possible during preparations and/or commencement of cleanup activities on scene.

Emergency Removal Actions

During emergency actions, out of necessity, the Federal On-scene Coordinator or the Unified Command will make dozens of critical decisions on a real time basis throughout the day and night. In order to provide meaningful input during the emergency decision-making process, parties typically must be on scene and participating in the response action. Consistent with the National Contingency Plan, when EPA is notified of a spill or release that could potentially impact Tribal interests, EPA's Duty Officer should provide verbal notification to any affected tribe. This verbal notification ordinarily should be coordinated through the U.S. Department of Interior or the Bureau of Indian Affairs.

There are two ways potentially affected tribes may participate in or monitor these emergency response activities. First, if a Unified Command System is established on scene to manage the emergency situation, EPA should, at the time of notifying the Tribal staff, invite the Tribe(s) to send a representative to the scene to join in the Unified Command, serving as either a qualified Tribal Incident Commander or as a technical specialist. Second, EPA produces pollution reports (POLREPS) during emergency actions to document key issues and decisions. EPA should add any potentially affected Tribes to the POLREP email distribution, thereby providing current and ongoing cleanup information to the Tribe if it is unable to participate directly, on scene. During emergency response actions, an Action Memorandum is only written for fund-lead cleanups, and even then it is usually written after any/all response and cleanup activities are completed due to the immediate need to protect public health and the environment.

Due to the often chaotic and uncontrolled nature of emergency response to spills and releases, the ability to conduct other aspects of consultation with potentially affected Tribes must be made on a case by case, incident-specific basis, with the goal of keeping the Tribe fully informed, and providing meaningful opportunity for tribal input.

Summary

1. EPA Region 10 will follow the full tribal consultation process for all non-time critical removal actions.
2. For time-critical removal actions that have less than a 6 month planning period, EPA Region 10 will make all attempts to follow the full tribal consultation process. In some cases, due to the urgency and dynamics of the removal activity, the tribal consultation process may take place concurrently to the cleanup activity.
3. During Emergency Response activities, EPA Region 10 will continue to notify all affected tribes regarding oil and chemical spills and releases that potentially affect Tribal interests. Further, Tribes will be invited to send a representative to participate on scene in the Unified Command. EPA will also add affected Tribes to the email distribution of all POLREPs. During emergencies, decisions regarding other aspects of Tribal consultation will be made on a case-by-case basis.

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Message

From: Manheimer, Jenna [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=5A94674EFC24005AC6B10D9747AB9EE-MANHEIMER, JENNIFER]
Sent: 8/5/2019 8:26:22 PM
To: Steven Courtney (steven.courtney@wstribes.org) [steven.courtney@wstribes.org]
CC: Baron, Adam [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=563ef058707d4930868c6cf1e0828a43-Baron, Adam]
Subject: Email Address for EPA + Jar Testing Assistance
Attachments: Attachment A WarmSprings_CoagulationControl_SOP_040919.pdf

Hi Steve,

Please send all sample results to R10TribalDW@epa.gov. If you email, there is no need to fax (and we prefer email).

For the jar testing training, it seems that Ladd already walked you guys through the process once and drafted the attached SOP, which takes care of the dosing legwork that can get tricky when figuring out volumes and product strength. Also, with your SCM system, the jar testing should be used to confirm what the SCM is controlling, rather than determining major process or dosage changes. Please follow Ladd's instructions for adjusting the SCM and keeping that process alive.

Ronnie seems to be comfortable with the jar testing and SCM, so he should begin doing this ASAP and just trying it out – it may take trial and error. Once you guys attempt this, you may ask Ladd to come back and follow up on what you're doing and tweak the process. You can also call Ladd, Adam or me if you run into glitches. But for now, you have to start the process and get things moving as stipulated in the Order. It's really important to monitor the chemical processes closely at your water plant due to its age and limitations.

Thank you.



Jenna Manheimer
Tribal Drinking Water Coordinator
EPA Region 10
206-553-1189

The Confederated Tribes of Warm Springs



Coagulation Control

Standard Operating Procedure
Dry Creek Water Treatment Plant

Warm Springs Community Water System

EPA PWS ID# 104101247

Approvals:

Chico Holliday
Water Wastewater Supervisor
Confederated Tribes of Warm Springs

04/09/19
Date

Travis Wells
General Manager
Branch of Public Utilities
Confederated Tribes of Warm Springs

4/9/19
Date

February 2019

Coagulant Control SOP

Purpose of Coagulant Control

Nearly every process in a water treatment plant depends on proper coagulation. When coagulation is optimized, flocculation and sedimentation are better able to remove particles before they get to the filter. Coagulation also conditions particles so they can be effectively captured by the filter. Further, removing particles from the water dramatically improves the effectiveness of disinfection, to prevent pathogens getting into the distribution system.

This SOP is intended to serve as a functional, practical guide to the tasks that need to be done in order to optimize coagulant dosage. Coagulant control has two parts: the streaming current monitor (SCM) and jar testing. They perform separate but complementary roles.

The SCM indicates the overall charge of the water after coagulant addition. Since water particles are naturally negative, the positively-charged coagulant is used to reduce this negative charge as much as possible. As long as a charge remains, the particles will not be able to floc together and settle out, nor be properly removed by the filter. A negative charge read by the SCM indicates that too little coagulant is being added. A positive charge read by the SCM means that too much coagulant is added. The SCM provides a very responsive indication of the charge of the water, in reaction to changes in both water quality and coagulant dosage. An ideal SCM reading is 0.00 Streaming Current Units (SCUs).

Jar testing complements the SCM by serving as a gut check while the SCM is functioning properly, and as a back-up when the SCM is malfunctioning or broken. It is extremely important to continue jar testing weekly even when the SCM is working properly.

Operation and Maintenance of the SCM and Turbidimeters

The following tasks are necessary to perform on a regular basis to ensure the SCM is operating properly and that coagulant is being properly dosed.

Hourly

Check the SCM value and adjust the LMI pump stroke as needed to control coagulant dosage (see instructions for adjusting LMI pump dosage below)



Keep SCM Reading close to 0.00

Fig 1. Streaming Current Monitor



Adjust pump frequency
(stroke per minute)

Stroke
(Normally set at 30%)

Fig 2. LMI Pump

SCM reading will respond to frequency adjustments in about 1 minute and 30 seconds. Adjust frequency again until SCM reading is close to 0.00.

Record the SCM reading before pump adjustment, adjusted LMI pump information (pump stroke and speed), SCM reading after pump adjustment, and whether one or 2 raw water pumps are in operation (sample data sheet provided at the end of this document).

Daily

Briefly flush the hydrocyclone and the sand filter to remove built up sediment. Close valve once flow is clear of sediment.

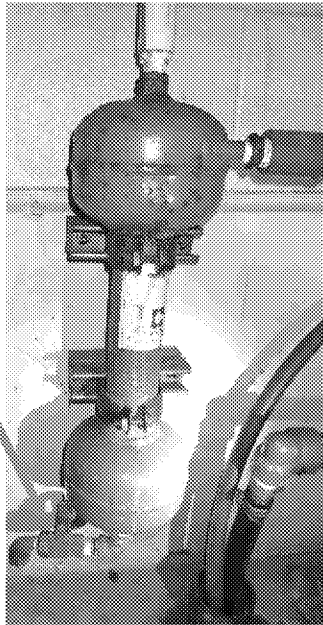


Fig 3. Hydrocyclone

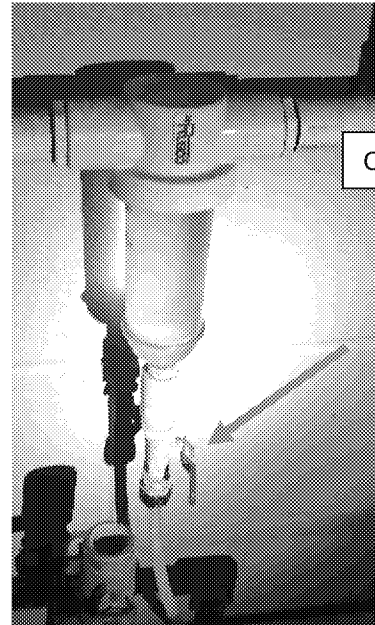


Fig 4. Sand Filter

Verify water supply to the SCM probe

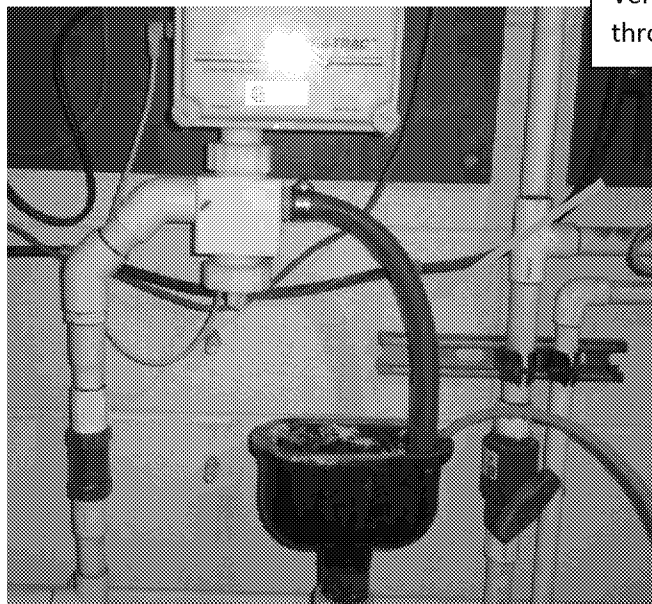


Fig 5. SCM Sample and Drain Line

Perform jar testing if the SCM is not functioning properly

Weekly

Clean the SCM probe and piston of organic slime build up using Comet Soft Scrub and bottle brushes (see instructions below)

Perform jar testing to ensure LMI pump coagulant dosage is correct, based on SCM readings

Every 3 months

Calibrate each turbidimeter (see User Manual, Hach 1720E Low Range Turbidimeter, Section 5.5)

Yearly

Replace bulbs in each turbidimeter (see User Manual, Hach 1720E Low Range Turbidimeter, Section 6.4.3)

Every few years or as needed

Replacement of the plastic tubing to and from the turbidimeters

Instructions on adjusting LMI pumping rate: (note: this section was modified from Section 8 of the Instruction Manual for the Series B9 and C9 Electronic Metering Pumps, produced by Novatech International.)

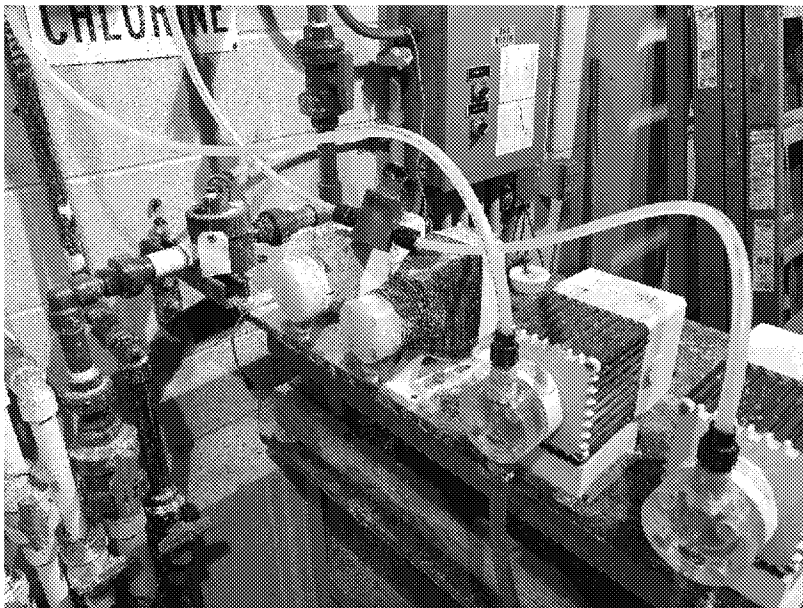


Fig 6. The chemical feed pumps. Verify which pump is supplying coagulant before making any adjustments. These pumps are located near the ACH feed barrels and the static mixer.



Fig. 7. Controls for the LMI Pump

1. Speed and stroke length can be changed while the pump is on or off.
2. To adjust the speed of the LMI pump, simply use the up or down arrows to change the speed. Ensure that the speed is displayed in numbers only. If the number for speed reads like H60, then that means the speed is in strokes per hour. To fix this, press the up arrow until the "H" disappears, so that stroke speeds are in strokes per minute. The current speed will be displayed on the liquid crystal display screen, just to the left of the arrows.
3. To adjust the stroke length of the LMI pump, simply rotate the knob until the pointer matches with the stroke length you want to set.
4. Since the SCM takes about 1.5 minutes to read flows from the initial mixer, it will take 1.5 minutes to respond to changes in coagulant dosage. Thus, just change either speed or stroke by a couple units at a time to see how the SCM responds. When fine-tuning, just change them by one unit at a time.
5. To calculate the flow rate from the LMI pump, divide the stroke number by 100, as well as the speed. Then multiply those numbers together, and multiply the result by 2.5. This will give you the flowrate from this pump in gallons per hour. For example, if speed was set to 50 and stroke

was set to 50, the actual flowrate would be: $(50/100) * (50/100) = 0.25$. $0.25 * 2.5 = 0.625$ gallons per hour.

Instructions on cleaning the SCM Probe: (note: This section was modified from Section 5 of the Operations Manual for the SCM 2000 XRW, produced by ChemTrac Systems, Inc.)

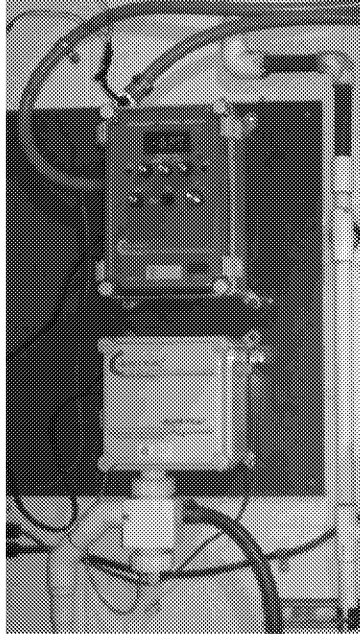


Fig. 8. ChemTrac display (top) and SCM (bottom). This is located in the same room as the raw water pumps, on the opposite wall.

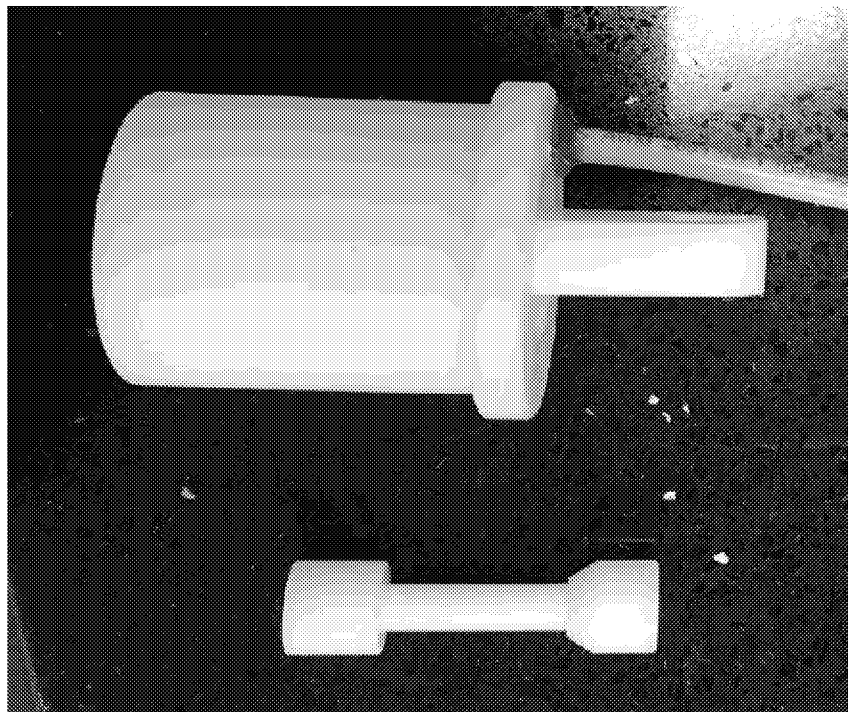


Fig. 9. Probe (top) and piston (bottom). Note the probe tab on the right side of this picture.

1. Disconnect the lead wire from the enclosure and remove the lower retaining slip nut from the probe.
2. Remove the probe by pulling on the tab. A small twist may be needed to loosen it.
3. Remove the piston using an appropriately sized flathead screwdriver.
4. Clean any debris from the cell housing.
5. To clean the probe wet ONLY the inside of the probe. DO NOT SUBMERGE OR SOAK THE PROBE. Sprinkle some Comet on the inside and scrub with a bottle brush. Rinse thoroughly with distilled water to remove any residue.
6. To clean the piston wet the outside of the piston. Sprinkle some Comet on the outside and scrub with a bottle brush. Rinse thoroughly with distilled water to remove any residue.
7. Screw clean piston into place. Do not over-tighten. Only slight torque is necessary.
8. Insert the clean probe back into the cell housing.
9. Slip the retaining nut over the probe lead wire and tighten onto probe. Finger tight is acceptable. Take care to ensure that the nut is not cross threaded.
10. Connect lead wire to the enclosure.
11. After cleaning the probe, the SCM readings may take several minutes to stabilize. The SCM may also be more sensitive to changes in coagulant feed or raw water. After the readings stabilize, adjust the LMI pump as needed to reduce the SCM reading to 0.00 SCUs.

A rough approximation of ACH dosing by the chemical feed pump can be estimated by using the table on the next page. This can be used to select the starting point for jar testing.

Approximate ACH Dosage in mg/L based on Stroke and Speed - 1 Pump in Operation											
Stroke Length (from 5-50)											
		5	10	15	20	25	30	35	40	45	50
Speed (from 5- 50 strokes per minute)	5	0.06	0.13	0.19	0.26	0.32	0.38	0.45	0.51	0.58	0.64
	10	0.13	0.26	0.38	0.51	0.64	0.77	0.89	1.02	1.15	1.28
	15	0.19	0.38	0.58	0.77	0.96	1.15	1.34	1.53	1.73	1.92
	20	0.26	0.51	0.77	1.02	1.28	1.53	1.79	2.04	2.30	2.56
	25	0.32	0.64	0.96	1.28	1.60	1.92	2.24	2.56	2.88	3.19
	30	0.38	0.77	1.15	1.53	1.92	2.30	2.68	3.07	3.45	3.83
	35	0.45	0.89	1.34	1.79	2.24	2.68	3.13	3.58	4.03	4.47
	40	0.51	1.02	1.53	2.04	2.56	3.07	3.58	4.09	4.60	5.11
	45	0.58	1.15	1.73	2.30	2.88	3.45	4.03	4.60	5.18	5.75
	50	0.64	1.28	1.92	2.56	3.19	3.83	4.47	5.11	5.75	6.39

Approximate ACH Dosage in mg/L based on Stroke and Speed - 2 Pumps in Operation											
Stroke Length (from 5-50)											
		5	10	15	20	25	30	35	40	45	50
Speed (from 5- 50 strokes per minute)	5	0.03	0.06	0.09	0.12	0.15	0.18	0.21	0.24	0.27	0.30
	10	0.06	0.12	0.18	0.24	0.30	0.36	0.42	0.48	0.54	0.60
	15	0.09	0.18	0.27	0.36	0.45	0.54	0.63	0.72	0.81	0.90
	20	0.12	0.24	0.36	0.48	0.60	0.72	0.84	0.96	1.08	1.20
	25	0.15	0.30	0.45	0.60	0.75	0.90	1.05	1.20	1.35	1.50
	30	0.18	0.36	0.54	0.72	0.90	1.08	1.26	1.44	1.62	1.80
	35	0.21	0.42	0.63	0.84	1.05	1.26	1.47	1.68	1.89	2.10
	40	0.24	0.48	0.72	0.96	1.20	1.44	1.68	1.92	2.16	2.40
	45	0.27	0.54	0.81	1.08	1.35	1.62	1.89	2.16	2.43	2.70
	50	0.30	0.60	0.90	1.20	1.50	1.80	2.10	2.40	2.70	2.99

Approximate ACH Dosage in mg/L based on Stroke and Speed - 1 Pump in Operation											
Stroke Length (from 5-50)											
		5	10	15	20	25	30	35	40	45	50
Speed (from 55- 100 strokes per minute)	55	0.76	1.53	2.29	3.06	3.82	4.58	5.35	6.11	6.88	7.64
	60	0.83	1.67	2.50	3.33	4.17	5.00	5.83	6.67	7.50	8.33
	65	0.90	1.81	2.71	3.61	4.51	5.42	6.32	7.22	8.13	9.03
	70	0.97	1.94	2.92	3.89	4.86	5.83	6.81	7.78	8.75	9.72
	75	1.04	2.08	3.13	4.17	5.21	6.25	7.29	8.33	9.38	10.42
	80	1.11	2.22	3.33	4.44	5.56	6.67	7.78	8.89	10.00	11.11
	85	1.18	2.36	3.54	4.72	5.90	7.08	8.26	9.44	10.63	11.81
	90	1.25	2.50	3.75	5.00	6.25	7.50	8.75	10.00	11.25	12.50
	95	1.32	2.64	3.96	5.28	6.60	7.92	9.24	10.56	11.88	13.19
	100	1.39	2.78	4.17	5.56	6.94	8.33	9.72	11.11	12.50	13.89

Approximate ACH Dosage in mg/L based on Stroke and Speed - 2 Pumps in Operation											
Stroke Length (from 5-50)											
		5	10	15	20	25	30	35	40	45	50
Speed (from 55- 100 strokes per minute)	55	0.36	0.72	1.07	1.43	1.79	2.15	2.51	2.86	3.22	3.58
	60	0.39	0.78	1.17	1.56	1.95	2.34	2.73	3.13	3.52	3.91
	65	0.42	0.85	1.27	1.69	2.12	2.54	2.96	3.39	3.81	4.23
	70	0.46	0.91	1.37	1.82	2.28	2.73	3.19	3.65	4.10	4.56
	75	0.49	0.98	1.46	1.95	2.44	2.93	3.42	3.91	4.39	4.88
	80	0.52	1.04	1.56	2.08	2.60	3.13	3.65	4.17	4.69	5.21
	85	0.55	1.11	1.66	2.21	2.77	3.32	3.87	4.43	4.98	5.53
	90	0.59	1.17	1.76	2.34	2.93	3.52	4.10	4.69	5.27	5.86
	95	0.62	1.24	1.86	2.47	3.09	3.71	4.33	4.95	5.57	6.18
	100	0.65	1.30	1.95	2.60	3.26	3.91	4.56	5.21	5.86	6.51

Purpose of Jar Testing

The purpose of jar testing is to determine what dosage of coagulant works best for a given set of water conditions. In cases where the SCM isn't working, jar testing is needed once per day to find the optimal dosage of coagulant. Even when the SCM is operational, jar testing about once a week is still good practice to ensure proper dosage rates are used. Jar testing can help improve the operation of the plant dramatically, by ensuring more solids are removed through flocculation and sedimentation. This relieves some of the burden on the filters, and increases filter run time. Further, determining the right dosage of coagulant can help save money for the plant.

One round of jar testing should take less than an hour to complete. It will take less time the more often you do it. Be sure to set aside about an hour for the first round you do.

Overview of chemical and equipment needs

To conduct jar testing you will need:

- A gang stirrer
- 6 square 2000 ml beakers (these are preferable to round beakers due to improved mixing, and the sampling port which makes sampling easier)
- 1 5 gallon bucket about 4/5 full of source water
- A small beaker with ACH coagulant
- Distilled water, both for mixing the coagulant and rinsing out the turbidimeter vials after testing is done
- One container with lid for mixing the 1% coagulant solution
- A turbidity analyzer with vials
- Pipettes/Syringes for dosing neat coagulant into distilled water, as well as a separate pipette or syringe for dosing the 1% solution into the raw water
- A data sheet to record data and observations (sample sheet is at the end of this SOP)
- A program to run the jar tester, so you don't have to manually adjust speeds and set timers during the process. A separate SOP has been developed to walk you through programming the suggested steps (fast mix, slow mix and sedimentation). Once this has been programmed into gang stirrer, the gang stirrer can be set to run the program very easily. The program on the SOP is as follows:
 - 100 RPM for 1 minute (flash mix/coagulation)
 - 35 RPM for 10 minutes (slow mix/flocculation)
 - 0 RPM for 10 minutes (sedimentation)
 - An alarm will sound at the end of the last 10 minutes to indicate it is time to take samples



Fig 10. Turbidity analyzer with vial inserted and example NTU reading. This is located in the laboratory.

Jar Testing Steps

1. Set up the lab with all the necessary pieces of equipment and chemicals, including raw water and coagulant.
2. Next, stir up the raw water in the bucket to ensure the sand and other particles are thoroughly mixed in. Take a turbidity sample from the raw water bucket and record it on the data sheet.
3. Now, fill each of the 6 square beakers to the 2000 ml line as close as possible with raw water. You can use a pipette to fine tune it once you're close.

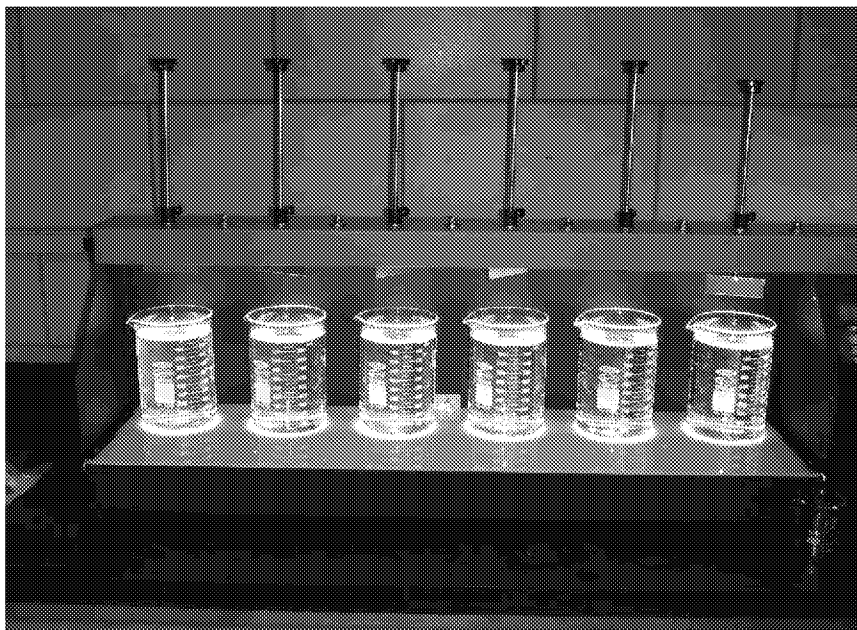


Fig. 11. Beakers with raw water. Round 1000 ml beakers were used here; however, square 2000 ml beakers (not shown) are preferred for jar testing due to improved mixing. The siphon tube is also helpful for sample collection.

4. Decide on how much you want to dose in the different beakers. You want to have a couple doses that are lower than the current feed rate, and a couple doses that are higher. For example, if the chemical feed pump is supplying 15 mg/L, you could try adding a dose of 5 mg/L, 10 mg/L, 15 mg/L, 20 mg/L and 25 mg/L to five different jars. Be sure to leave one jar as a control or blank, meaning you don't add any coagulant to it. Write down the dosages you want to add to each beaker on your data sheet. You can also write them on slips of paper and put them in front of each beaker, so you can keep track of which is which.
Note: for your first set of jar tests, it may be worthwhile to only use 1 or 2 beakers until you get the hang of it, and then adding others as needed. Having a helper for this process makes a big difference.

- Next, determine how much 1% ACH solution you need to make. This concentration of coagulant will add 5 mg/L for every 1 ml you add into the raw water beakers (see table below).

Table 1. Dosing the Raw Water Beakers

If you want to have this concentration of ACH (in mg/L)...	Then you should add this much of a 1% coagulant solution (in ml)...	To this much raw water
5	1	2000 ml (square beakers)
10	2	
15	3	
20	4	
25	5	
30	6	

So, to reach a concentration of 10 mg/L ACH in a beaker, you would simply add 2 ml of the 1% coagulant solution. If we continue our example of dosing 5 mg/L, 10 mg/L, 15 mg/L, 20 mg/L and 25 mg/L, we would need a total of 15 ml of 1% ACH (simply add the concentrations in mg/L and divide by 5: $(5+10+15+20+25) = 75$. $75/5 = 15$ ml of 1% coagulant solution). To be safe, we would make 50 ml of the 1% coagulant solution, in case we want to do another jar test. Next, follow the guidelines in the below table to determine how much coagulant you need to add to distilled water to make the 1% coagulant solution:

Table 2. Making the 1% Coagulant Solution

If you want to make this amount of 1% coagulant solution (in ml)...	Then you should add this amount of coagulant (in ml)...	To this amount of distilled water (in ml)
50	0.37	49.5
100	0.75	99
150	1.12	148.5
200	1.49	198

Mix the ACH with water in a small container, preferably with a lid. You'll draw from this container when you dose the coagulant into the larger beakers with the raw water. Once this mixture has been made, secure the container with a lid and shake for 30 seconds to a minute.

- At this point, you can lower the paddles into the raw water beakers, and turn on the gang-stirrer. Press 2 on the keypad to select **RUN SEQUENTIAL**. The jar tester will start rotating at 100

rpm. This will simulate the coagulation step in the static mixer currently in use. Using a pipette, add the desired coagulant dosage to each beaker. In this example, we would dose as follows:

- a. Jar 1 – 0 mg/l (control)
- b. Jar 2 – 5 mg/l (1 ml of 1% coagulant solution)
- c. Jar 3 – 10 mg/l (2 ml of 1% coagulant solution)
- d. Jar 4 – 15 mg/l (3 ml of 1% coagulant solution)
- e. Jar 5 – 20 mg/l (4 ml of 1% coagulant solution)
- f. Jar 6 – 25 mg/l (5 ml of 1% coagulant solution)

Try to add the coagulant as quickly as possible to each jar, so each jar has about the same amount of time for the coagulant to disperse.

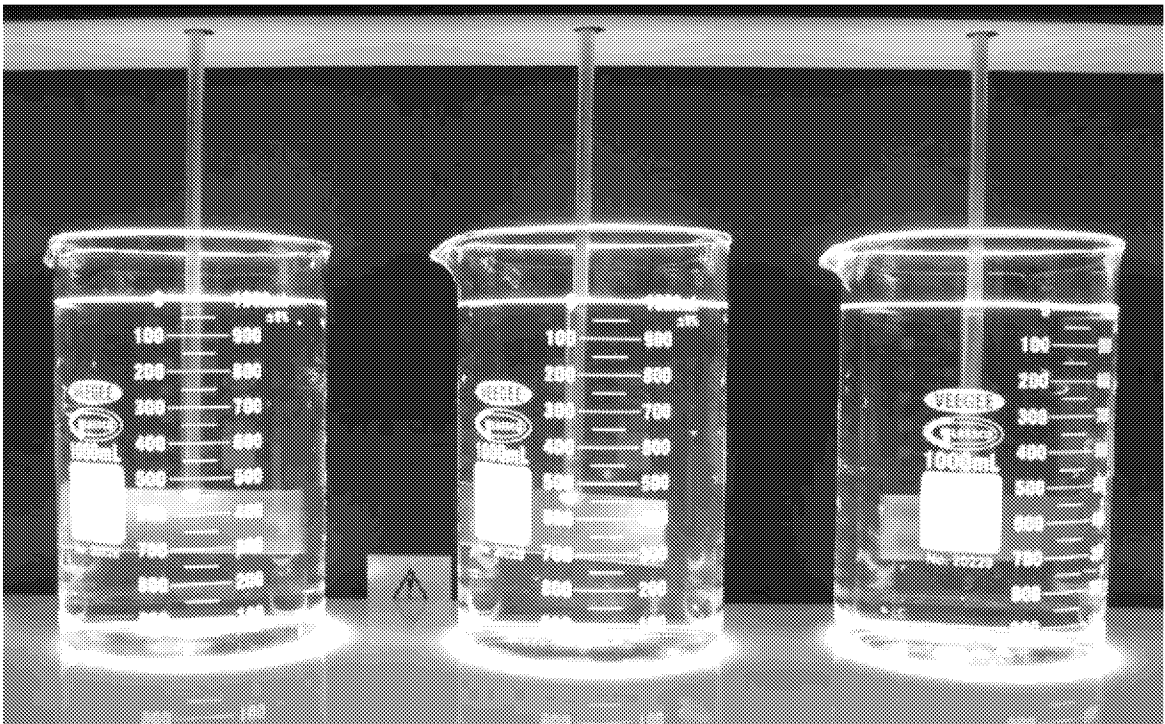


Fig. 12. Initial mixing of jar test

7. After the minute is up, the jar tester will continue to the next step of the program and rotate at 35 rpm for 10 minutes. This will simulate the flocculation step. While the gang stirrer is running, observe each beaker and note which jar forms flocs first, and write this on your data sheet. Also note how the floc particles are forming. Some will be a little larger and fluffy, and others will be more compact. Floc particles which are more compact are more desirable, as they are easier to remove. Note any observations on your data sheet. The background light switch is to the right of the right-most beaker, and is helpful in illuminating flocs.

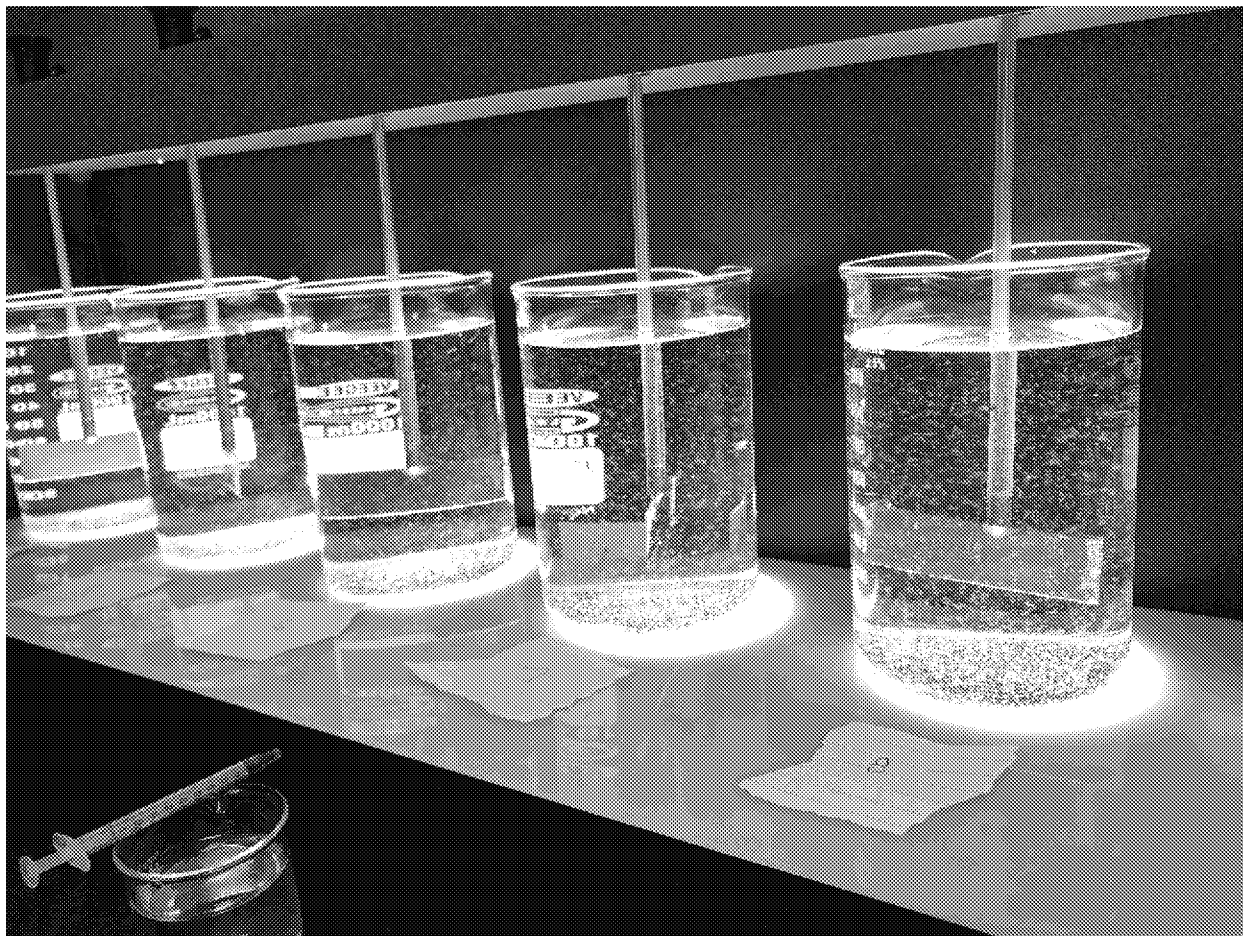


Fig. 13. Jars during the flocculation stage. Note slips of paper noting the coagulant dosage for each beaker.

8. Once the 10 minutes have passed, the paddles will stop stirring so the particles have a chance to simply settle out, as they would in the sedimentation basin. You can leave the paddles in the beakers. Continue observing and making notes on your data sheet as needed.
9. At the end of the 10 minutes, the alarm should sound, signaling the end of the sedimentation step. Drain the siphon tube for each beaker so you collect a fresh sample. Start collecting turbidity samples from the beakers. Use the tube from each beaker to sample enough water to fill the turbidity vials to the appropriate line. Make sure to collect the samples, check the turbidity and write down the result quickly, so that each jar is sampled right after the other. Leaving too much time between samples will affect the results, as beakers that have not been sampled until much later will have more particles that settle out, giving the appearance that the dosage in that beaker is preferable.
10. Now, analyze your results. Based on the final turbidity of the beakers, which coagulant dosage is best? Based on the floc formation, which coagulant dosage is best? If two dosages give similar results (for instance, 7 mg/l and 10 mg/l both give about the same turbidity readings), it may be worth it to conduct a second round of jar testing. In that case, you could dose the jars as such:
 - a. Jar 1 – 0 mg/l (control)
 - b. Jar 2 – 7 mg/l

- c. Jar 3 – 8 mg/l
- d. Jar 4 – 9 mg/l
- e. Jar 5 – 10 mg/l
- f. Jar 6 – 11 mg/l

Another table with additional concentration dosages is presented here for reference. Any dosage of 1% coagulant solution (in ml) can be determined by dividing the desired concentration of ACH in the raw water (in mg/L) by 5.

Table 3. Additional Dosages for the Raw Water Beakers

If you want to have this concentration of ACH (in mg/L)...	Then you should add this much of a 1% coagulant solution (in ml)...	To this much raw water
6	1.2	2000 ml (square beakers)
7	1.4	
8	1.6	
9	1.8	
10	2	
11	2.2	

11. Select an optimum coagulant dosage and compare with that currently being dosed by the chemical feed pump, as guided by the SCM. If it's a slight difference, adjust the chemical feed pump as necessary. Use the table provided under the SCM section as a guide, taking into consideration whether one raw water pump is running or both. If there is constantly a wide variation between the optimal dosage found through jar testing, and that found by using the SCM, that may point to an issue in the SCM, jar testing methodology, or both. In those cases, reaching out to appropriate IHS personnel may be appropriate.

Programming the Jar Tester

Note: parts of this SOP were modified from the PB-900 Programmable JarTester Instruction Manual, developed by Phipps&Bird.

Jar testing involves testing the effectiveness of a coagulant over different mixing speeds, each for different lengths of time. Running a jar test can involve a lot of tasks, and manually adjusting the timing and mixing speed of the gang stirrer can interrupt the work flow.

This is a guide to program the jar tester so it automatically runs through a sequence of mixing speeds and times with the push of just a couple buttons, and eliminates the need to adjust mixing speeds and set separate timers.

We are going to set up the gang stirrer to run this series of mixes:

100 RPM for 1 minute (flash mix/coagulation)

35 RPM for 10 minutes (slow mix/flocculation)

0 RPM for 10 minutes (sedimentation)

We will program one alarm into this program, at the end of the sedimentation step. If you want to add more alarms in the future, you should have a clear sense of how to do that if desired in the future by the end of this SOP.

1. Turn the power switch to on. The **MAIN** selection window will appear. This will have four options:

- 1) Run Continuous
- 2) Run Sequential
- 3) Run Single Memory
- 4) Program Memories

2. Select **PROGRAM MEMORIES** by hitting **4** on the keypad. The **CHOOSE MEMORY** screen will appear:

Choose Memory	M1
RPM:	000
Time:	00:00 mm:ss
Alarm:	00 minutes

3. Press **ENTER** and **EDITING VALUES IN M1** will appear:

Editing Values in M1	
RPM:	000
Time:	00:00 mm:ss
Alarm:	00 minutes

4. A blinking cursor will appear besides **RPM**. Hit **100** on the keypad and hit **ENTER** to set the **RPM** setting. The cursor will then move to the next field, **TIME**.

```
Editing Values in M1
RPM:      100
Time:     00:00 mm:ss
Alarm:    00 minutes
```

5. Press **100** and **ENTER** to accept run time.

```
Editing Values in M1
RPM:      100
Time:     1:00 mm:ss
Alarm:    00 minutes
```

6. The cursor will move to the **ALARM** field. If the value for **ALARM** is not **0**, hit **0** and **ENTER** to set it. Otherwise, press **BACK** to go to the **CHOOSE MEMORY** screen.
7. Press **UP** and **ENTER**. The **EDITING VALUES IN M2** screen will appear. Press **35** and **ENTER** to change the **RPM** setting.

```
Editing Values in M2
RPM:      035
Time:     00:00 mm:ss
Alarm:    00 minutes
```

8. The cursor will move to **TIME**. Hit **1000** on the keypad and **ENTER** to set the **TIME**.

```
Editing Values in M2
RPM:      035
Time:     10:00 mm:ss
Alarm:    00 minutes
```

9. The cursor will move to the **ALARM** field. If the value for **ALARM** is not **0**, hit **0** and **ENTER** to set it. Otherwise, press **BACK** to go to the **CHOOSE MEMORY** screen.
10. Press **UP** twice and **ENTER**. The **EDITING VALUES IN M3** screen will appear.
11. Press **0** and **ENTER** to accept the **RPM** setting.

```
Editing Values in M3
RPM:      000
Time:     00:00 mm:ss
Alarm:    00 minutes
```

12. Press **1000** and **ENTER** to accept the time.

```
Editing Values in M3
RPM:          000
Time:         10:00 mm:ss
Alarm:        00 minutes
```

13. Press **10** and **ENTER** to set the **ALARM** frequency.

```
Editing Values in M3
RPM:          000
Time:         10:00 mm:ss
Alarm:        10 minutes
```

14. Press **BACK** to go to the **CHOOSE MEMORY** screen.
15. Press **DOWN** to go to the **EDITING VALUES IN M4** screen. Ensure all parameters are set to **0**; if not, follow the steps above to set them to **0**.

```
Editing Values in M4
RPM:          000
Time:         00:00 mm:ss
Alarm:        00 minutes
```

16. Press **BACK** twice to go to the **MAIN** selection window. You have finished programming the jar tester. You can turn off the jar tester and unplug it, and the programmed memories you just assigned will be available whenever it is turned on in the future.

When you are ready to begin (ie, raw water is in each beaker, the paddles have been lowered into the beakers, and coagulant is ready to dose), turn **ON** the jar testing setup. Press **2** to select **RUN SEQUENTIAL**. This will run the program stored in M1 (the fast mix), then the program stored in M2 (the slow mix) and finally the program stored in M3 (sedimentation/no mixing). M4, as it has all its parameters zeroed out, will not contribute to the sequential program.

Once you have experience jar testing and want to change the program to more accurately match conditions in the plant, you can use this as a reference to do so, or you can use the PB-900 Programmable JarTester Instruction Manual, available from the Phipps & Bird website, and attached here for reference.

Jar Testing Data Collection - to be done weekly if SCM is working, or daily if SCM is not working

PWS ID#	104101247
Plant Name	Warm Springs Water Treatment Plant
Operator	
Date	
Time	

Initial Turbidity (NTU)

	Jar 1	Jar 2	Jar 3	Jar 4	Jar 5	Jar 6
ACH Dosage (mg/L)						
Final Turbidity (NTU)						
First to form floc						
Observations (ex, small pinhole floc, large fluffy floc, etc)						

Initial Turbidity (NTU)

	Jar 1	Jar 2	Jar 3	Jar 4	Jar 5	Jar 6
ACH Dosage (mg/L)						
Final Turbidity (NTU)						
First to form floc						
Observations (ex, small pinhole floc, large fluffy floc, etc)						

SCM Data Reporting - to be done hourly while plant is on
--

PWS ID#

104101247

Plant Name	Warm Springs Water Treatment Plant
------------	------------------------------------

Warm Springs Water Treatment Plant

[illegible]

Message

From: R10TribalDW [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=1468FF08DD81463C95B188691AC7C598-R10TRIBALDW]
Sent: 11/15/2019 10:29:28 PM
To: TRAVIS.WELLS@WSTRIBES.ORG
CC: chico.holiday@wstribes.org; STEVEN.COURTNEY@WSTRIBES.ORG; JASON.TOHET@WSTRIBES.ORG; Folster, Laddie (IHS/POR) [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=userfdb42323]; Tucker, Michelle [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=28b0431c287d402dbacc99ee60f4e977-Tucker, Michelle]
Subject: Returned to Compliance: Warm Springs Sidwalter CWS PWS ID#104001101
Attachments: 7 - Returned to Compliance Warm Springs Sidwalter CWS PWS ID#104001101.pdf



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10**

1200 Sixth Avenue, Suite 155
Seattle, WA 98101-3123

WATER
DIVISION

November 14, 2019

Mr. Travis Wells,
General Manager, Public Utilities Branch
Warm Springs Indian Reservation
PO Box C
Warm Springs, Oregon 97761

RE: Approval and Closure of All Significant Deficiencies at the at the Warm Springs Sidwalter Community Water System, PWS ID #104101101; System Returned to Compliance

Dear Mr. Wells:

Thank you for submitting documentation of the corrections made to address the significant deficiencies identified in the Environmental Protection Agency's (EPA's) Notice of Deficiency letter you received on August 3, 2014 and Notice of Violation letter you received on April 26, 2018. The purpose of this letter is to inform you that EPA concurs that all significant deficiencies were corrected; your system has been returned to compliance and the national database updated accordingly.

Enclosed is confirmation of each significant deficiency correction via EPA's Corrective Action Plan tracking form. If you have any questions regarding this letter or the attached document, please do not hesitate to contact me at R10TribalDW@EPA.GOV or (206) 553-1414.

Sincerely,

Michelle Tucker

Michelle Tucker
Groundwater Rule Manager

Enclosure

cc: Mr. Chico Holliday
Water/Wastewater Supervisor,
Confederated Tribes of Warm Springs

Mr. Steve Courtney,
Operator, Sidwalter Community Water System

Mr. Jason Tohet,
Operator, Sidwalter Wastewater Treatment Plant

Ms. Laddie Folster,
Tribal Utility Consultant, Indian Health Services

Corrective Action Plan

EPA Region 10
Tribal Public Water System Supervision Program

All public water systems are required to undergo sanitary surveys. Public water systems using groundwater water must consult about required corrective actions within 30 days of being notified of a significant deficiency and must complete corrective actions or be in compliance with an approved Corrective Action Plan within 120 days of receiving notice of significant deficiencies (40 CFR 141.403 (a)).

A proposed corrective action plan must provide a written description of **how** and **on what schedule/when** the following significant deficiencies will be/were addressed. Please fill in the table below and submit documentation of correction to the significant deficiencies below to Michelle Tucker at tucker.michelle@epa.gov. Please submit photos, receipts, or other items documenting corrections that have been made (reference documentation with written statement in column B).

PWSID:	104101101
System Name:	Sidwalter CWS
Primary Source:	Groundwater
Sanitary Survey Date:	4/24/2014
Surveyor:	Tia Skerbeck
Notice Date:	8/1/2014

Notice of Violation Date:	4/24/2018
----------------------------------	------------------

Deficiency	Schedule to Address Deficiency		Accomplishments (date completed)
	Milestone/Corrective Action Description	Scheduled Date	
Sources - #4 A sample tap must be provided on the well discharge pipe following treatment.	First sampling point after treatment installed outside of the pumphouse because of low height/space within the pumphouse. Picture submitted.		10/21/19
Sources - #6 The well vent must be screened with the return bend facing downward and terminating 18-inches above ground level or above minimum flood level, whichever is higher.	A proper vent tube was installed on the lid of the Well pump Head area using brass nipples, couplers, and #24 Mesh screening. Picture submitted.		10/21/19
Sources - #7 The conduits and junction boxes must be sealed to prevent contaminants from entering the well casing.	Drinking Water Approved Silicone used to prevent insects from entering the well casing. Picture submitted.		11/14/19

Please list any additional attachments included with this plan:

Pictures provided for all corrections.

I understand that failing to meet an EPA approved Deficiency Corrective Action Plan may constitute a violation of the Safe Drinking Water Act.

Chico Holliday

Name (print)

address

Phone

email

Signature

11/14/2019

Date

Deficiency	Schedule to Address Deficiency		Accomplishments (date completed)
	Milestone/Corrective Action Description	Scheduled Date	

EPA Use Only	
Michelle Tucker approved by (print)	11/14/2019 closed date
<i>Michelle Tucker</i> Compliance Officer Signature	 Date

Message

From: Hancey, Derek (IHS/POR) [Derek.Hancey@ihs.gov]
Sent: 10/17/2019 4:35:51 PM
To: Barry Buchanan [Barry@buchananandassociates.com]; Baron, Adam [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=563ef058707d4930868c6cf1e0828a43-Baron, Adam]; Travis Wells <travis.wells@wstribes.org> (travis.wells@wstribes.org) [travis.wells@wstribes.org]; Chico Holliday [chico.holliday@wstribes.org]
Subject: IHS Follow-Up: L71 Project and HUD 3rd Party Verification Letter
Attachments: 3rd Party Verification Letter.docx; PO-13-L71 PDP (signed).pdf; PO-13-L71 MOA (signed).pdf

Good Morning,

I apologize but I do not have access to the signed 3rd party verification letter that James wrote in support of the Tribe's Imminent Threat Grant application. The attached Word version is what I could find on our server. I have high confidence that the 5 listed projects reflect what was sent out in the final letter. Otherwise Travis, Alyssa, Russell, Bruce, or Tom Carney may been cc'd on the finalized copy.

The L71 Project Development Plan and MOA are attached.

Sincerely,

LT Derek Hancey, P.E.
Environmental Engineer Consultant
Division of Sanitation Facilities Construction
Portland Area Indian Health Service
1414 NW Northrup Street, Suite 800
Portland, OR 97209
503-414-7784



Our Mission...to raise the physical, mental, social and spiritual health of American Indians and Alaska Natives to the highest level.



Department of Health and Human Services

Indian Health Service
Office of Environmental Health and Engineering
Division of Sanitation Facilities Construction
Western Oregon Field Office

1414 NW Northrup St.
Suite 800
Portland, OR 97209
Ph: (503) 414-7784
Fax: (503) 414-7776

[DATE \@ "MMMM d, yyyy"]

Mr. Tom Carney
Director Grants Management, NwONAP
909 First Avenue, Suite 200
Seattle, WA 98104

Dear Mr. Carney:

The Confederated Tribes of the Warm Springs Indian Reservation (CTWS) has requested a third-party review and verification from IHS of their application for an Imminent Threat Grant from NwONAP. The Tribe is applying for funding to address immediate deficiencies at the water treatment plant (WTP), EPA regulated water system #104101247, which serves a population of approximately 4,000 people and has a peak operating capacity of 4.3 MGD.

CTWS has identified five urgent priorities for the continued safe operation of their facility and protection of public health:

1. Replacing the filter media in all four filters
2. Rebuilding the Finish Water Pump No. 2
3. Repairing Raw Water Pump No. 1
4. HVAC system repairs (currently non-operational)
5. Repair and integrate telemetry with SCADA system

IHS is actively working with CTWS to optimize operation of the plant and plan for long-term facility upgrades to provide the community with safe drinking water over a 40-year planning horizon. Through regular consultation with CTWS and the delivery of funded planning projects, IHS has developed a thorough understanding of the WTP facilities

and their operation. IHS has reviewed the Tribe's application and concurs that the priorities listed are critical items and that the list is reasonably complete to ensure adequate operation for the next five years.

Sincerely,

LCDR James Earl
Engineer Consultant, IHS

CC: Travis Wells, General Manager Public Utilities, CTWS
Alyssa Macy, Chief Operations Officer, CTWS
Russell Graham, Tribal Sanitarian, CTWS



DEPARTMENT OF HEALTH & HUMAN SERVICES

Public Health Service

SEP 13 2013

PORTLAND AREA
INDIAN HEALTH SERVICE
1414 NW NORTHROP, Suite 800
PORTLAND, OREGON 97209

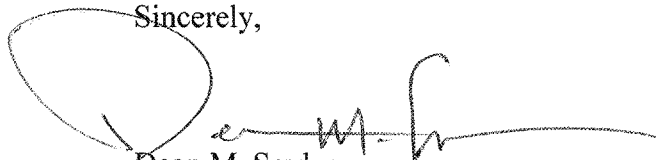
Mr. Eugene Greene, Jr.
Chairman, Tribal Council
The Confederated Tribes of the Warm Springs Reservation
1233 Veterans St.
Warm Springs, OR 97761

Dear Chairman Greene:

Enclosed for your file is an executed copy of the Memorandum of Agreement for Public Law 86-121, Project PO-13-L71 for construction of sanitation facilities for the Confederated Tribes of the Warm Springs Reservation. Thank you for your continued partnership with the Sanitation Facilities Construction (SFC) program.

If your appointed Tribal Representative for this project has any questions regarding implementation, they may contact the Acting SFC Director, CAPT Mathew J. Martinson, P.E. at (503) 414-7780; or the Project Manager, LT Jason Davis, E.I.T, at (503) 414-7775 or by e-mail at Jason.Davis@ihs.gov.

Sincerely,



Dean M. Seyler
Director

Enclosure

cc: Mr. Don Courtney, General Manager, Public Utilities Branch

PRELIMINARY
MEMORANDUM OF AGREEMENT
AMONG
INDIAN HEALTH SERVICE,
AND
THE CONFEDERATED TRIBES OF THE
WARM SPRINGS INDIAN RESERVATION
OREGON

PUBLIC LAW 86-121
IHS PROJECT PO-13-L71

This Agreement is made among the Indian Health Service, hereinafter called IHS, acting through the Director, Portland Area Indian Health Service, U.S. Department of Health and Human Services, under and pursuant to the provisions of Public Law 86-121 (73 Stat. 267); and the Confederated Tribes of the Warm Springs Indian Reservation, hereinafter called the Tribe, acting through the Council Chairperson.

WHEREAS, the Tribe desires to conduct assessments and planning to the surface water treatment plant located on the Confederated Tribes of Warm Springs Indian Reservation; and

WHEREAS, the Tribe has requested assistance of the IHS under Public Law 86-121 to evaluate existing surface water treatment plant facilities; and

WHEREAS, IHS desires to assist in the assessment and planning of the surface water treatment plant to serve the Warm Springs community on the Confederated Tribes of Warm Springs Indian Reservation; and

WHEREAS, the Environmental Protection Agency (EPA) and IHS have entered into a Memorandum of Understanding to cooperate in assisting Indian tribes and nations to address community sanitation facilities needs under the federal Safe Drinking Water Act (SDWA), as amended; and,

WHEREAS, the EPA, under the authority of the SDWA, as amended, has identified funding for this project through the Tribal Set-Aside Program; and,

WHEREAS, the Tribe approves of the transfer of the EPA grant funds to the IHS, as the lead federal agency for this project, to complete the proposed planning activities; and,

NOW THEREFORE, in order to carry out the project as set forth in the attached Project Development Plan entitled "PROJECT DEVELOPMENT PLAN, SURFACE WATER TREATMENT PLANT FACILITIES PLAN, FOR THE CONFEDERATED TRIBES OF THE WARM SPRINGS INDIAN RESERVATION, OREGON, PL-86-121, IHS PROJECT NO. PO-13-L71, AUGUST 2013", the parties mutually agree:

TRIBAL CONTRIBUTIONS

1. That the Tribe shall designate a representative with the authority to act for the Tribe in implementing the approved project as provided in this Agreement.
2. That the Tribe will execute an agreement with EPA for a Grant of Services whereby the Tribe will direct EPA to transfer grant funds in the amount of \$71,321.00 to IHS towards the eligible costs of the completion of planning activities and/or provision of services as described in the attached Project Development Plan.
3. That the Tribe shall provide all materials, supplies, equipment, labor, and/or services to necessary to procure a portion of the planning activities and/or services as described in the Project Development Plan.
4. That the Tribe will provide, without charge, assistance in complying with the regulation (36 CFR Part 800) implementing Section 106 of the National Historic Preservation Act (16 USC 470f) by informing IHS of any traditional cultural properties which might be affected by the completion of planning activities and/or provision of services. The Tribe shall take appropriate steps to identify traditional cultural properties which could be affected by the project, including contacting traditional cultural leaders or other tribal members who may have knowledge about such locations, sites, or objects.
5. That for all work performed by the Tribe, the Tribe shall provide through its procurement system completion of all proposed planning activities and/or provision of services described in the Project Development Plan. The Tribe shall procure the completion of planning activities and/or provide the services in accordance with this Agreement and with the requirements of Addendum A, entitled "Requirements for Tribal Procurement of Sanitation Facilities, Including Materials, Construction and Services under P.L. 86-121 MOA."
6. That the Tribe shall carry out its responsibilities under the project in accordance with the requirements of Addendum B, entitled "Requirements for Fund Control, Allowable Costs, Records and Property under P.L. 86-121 MOA."

PERMISSION TO ENTER TRIBAL LANDS, RIGHTS-OF-WAY, AND DISCOVERY

7. That the Tribe hereby grants permission to IHS, EPA and their representatives to enter upon or cross lands of the Confederated Tribes of the Warm Springs Indian Reservation to carry out this project as outlined in the attached Project Development Plan and as provided for in this Agreement. The Tribe further agrees to waive all claims which may arise by reason of entry upon such lands, except those which qualify under the Federal Tort Claims Act.
8. That the Tribe shall provide, at no cost to IHS or EPA, all required lands, easements, and rights-of-way necessary over lands controlled by the Tribe for the completion of proposed planning activities as described in the attached Project Development Plan. All interests in such lands, easements, and rights-of-way shall remain with the Tribe, except as otherwise provided for in this Agreement.

9. That IHS shall consult with the Tribe regarding excavations that may result in inadvertent discovery of human remains in accordance with the Native American Graves Protection and Repatriation Act Regulations (43 CFR Part 10) and related regulations. This Agreement shall serve as official notice to the Tribe that the completion of the proposed planning activities may result in inadvertent discoveries, and that any such discoveries shall be subject to the above regulations. This includes consultation between IHS and the tribally-designated cultural resources representative concerning disposition of human remains or related cultural items. If the Tribe is administering completion of planning activities and/or provision of services through a tribal contract or by Tribal Force Account crews, the Tribe shall assume full responsibility for compliance with 43 CFR Part 10.

COSTS

10. That the Tribe shall develop and submit to IHS for approval by the Director, Division of Sanitation Facilities Construction, Portland Area (DSFC), a schedule of proposed unit costs for the completion of proposed planning activities and/or provision of services to be procured by the Tribe. The Tribe shall negotiate these unit costs if necessary to receive approval by the Director, Portland Area DSFC. These unit costs shall govern for the duration of this project.

11. That if other special units of work, cost increases within the amount budgeted for contingencies, or modifications to the scope of work are needed during execution of the project, the Tribe shall submit a list of proposed costs for negotiation on those items. Costs for the special items, cost increases, or modifications then shall govern either for the duration of the project, or for just those sites specified in the proposal, as agreed at the time.

12. That IHS shall review and negotiate proposed unit costs for all items of work under the project. Once accepted by IHS, these unit costs shall govern all work completed by the Tribe for the duration of the project. Unit costs for special items of work, cost increases within the amount budgeted for contingencies, or modifications within the scope of the project shall be negotiated before IHS authorizes work. No work shall be performed on special items or additional items of work identified prior to written approval by the Director, Portland Area DSFC.

INDIAN HEALTH SERVICE CONTRIBUTIONS

13. That IHS designates the Director, Portland Area DSFC as the representative with the authority to act for the IHS in implementing the approved project as provided in this Agreement.

14. That IHS shall designate a Project Engineer to provide overall project management and oversight on behalf of the Tribe, as described in this Agreement and the attached Project Development Plan. These services shall be provided as an "in-kind" contribution to the project.

15. That in the interest of coordination, understanding, and economy, before substantial work on the project begins, a work plan and priority for the scheduling and conduct of the project shall be prepared by the IHS Project Engineer in consultation with the Tribe. The work plan will specify the critical project work elements to be accomplished by IHS and the Tribe, and a time

schedule for completing them. The work plan may be modified or amended by the Project Engineer when necessary to facilitate accomplishment of the project. The Project Engineer will make the work plan, and any subsequent changes, available for review and comment by the Tribe prior to implementation.

16. That pursuant to this Agreement, IHS shall make available IHS Regular funds in the amount of \$93,679.00 towards the eligible costs of the completion of planning activities and/or provision of services as described in the attached Project Development Plan.

17. That upon execution of this Agreement, IHS will enter into an Interagency Agreement (IAG) with the EPA under which EPA will transfer funds to IHS in the amount of \$71,321.00, as described in the attached Project Development Plan.

18. That for all planning activities to be completed and/or services provided by the Tribe, IHS shall provide written scopes of work detailing the performance requirements, as described in the Project Development Plan. Advisory services for contracts procured or work performed by the Tribe shall be provided as technical assistance to review compliance with minimum IHS standards.

19. That at least 30 working days before IHS provides the Tribe the final written scopes of work detailing performance requirements for advertising for completion of planning activities and/or provision of services, IHS shall submit to the EPA for review and comment the draft written scopes of work.

20. That for approved work completed by the Tribe, upon receipt of the Tribe's request for contribution, IHS shall contribute to the Tribe funds in an amount not to exceed \$141,625.00 without an amendment to this Agreement. The contributions shall be made on the following terms:

- a. That, for each contribution requested, all planning activities have been completed and/or services provided, a final inspection has been held, and IHS has determined the work to be in compliance with approved written scopes of work detailing the performance requirements.
- b. That the Tribe has submitted a signed Contribution Request listing the number of units of work accomplished, the cost (at the agreed unit cost times quantities), the requested current contribution, the grand total cost of work completed to date, and the total of contributions approved through the previous request.
- c. That the Tribe has submitted acceptable reports, plans, and/or as-built drawings and required test results and samples for which a contribution is requested. IHS will not authorize payment until 100% of required data is provided.

21. That the amount of contributions calculated under Paragraph No. 20 of this Agreement above may include an administrative project support fee of up to 3% of the cost of the work for administering the project, as long as the total cost does not exceed the maximum amount established in Paragraph No. 20 of this Agreement.

SPECIAL PROVISIONS FOR PROJECT FUNDING

22. That IHS approval of the Tribe's unit cost proposal shall be contingent upon receipt of cash contributions from the EPA by IHS as provided in Paragraph No. 17 of this Agreement.

23. That if the actual costs of completing the proposed planning activities and/or provision of services are less than the total amount of funds provided under this project, then surplus funds will be returned to the parties in proportion to their cash contribution to the project, unless the parties mutually agree otherwise. Alternatively, if the project cost of completing the proposed planning activities and/or provision of services exceeds the total funds provided by the parties, then IHS and the Tribe will notify the EPA immediately. The Tribe will perform no additional work beyond the amount of funds available until the parties have either provided additional funds or agreed to a revised scope of work to allow completion of the project within the funds available, and executed an amendment to this Agreement. Any additional funds requested of any party shall be subject to the availability of funding and prior approval.

SPECIAL PROVISIONS FOR DIRECT PROJECT MANAGEMENT BY IHS

24. That the proposed planning activities and/or services to be completed and/or provided under this project shall be completed in accordance with the existing standards and procedures used by IHS. Completion of planning activities and/or provision of services shall begin as soon as practicable after this Agreement becomes effective in accordance with the schedule to be agreed upon between the Tribe and IHS.

25. That IHS, as manager of the funds under the project, shall establish a separate account and maintain a set of accounting records that reflect all transactions using funds received from the EPA for this project. IHS shall charge to the project only those direct costs necessary for and allocable to the project. That upon conclusion of the project, IHS shall provide to the Tribe and EPA a comprehensive listing of all expenditures and planning activities completed and/or services provided under the project. The Portland Area Director, DSFC, shall confirm in writing his/her determination that all such expenditures were in conformance with the approved scope of work in the Project Development Plan.

26. That it is acknowledged that the \$71,321.00 EPA contribution to IHS constitutes the funds reserved by EPA under the Indian Set-Aside Provisions of the Tribal Set-Aside Provisions of the SDWA for the Tribe's approved application to EPA for assistance under the SDWA.

27. That upon completion of planning activities and/or provision of services, IHS, following its normal procedures for final inspection and evaluation, shall make a written determination

regarding the conformance of the planning activities completed and/or services provided within the project to the approved scope of work described in the Project Development Plan.

FINAL INSPECTION

28. That representatives from the Tribe, EPA, and IHS shall conduct a joint final review of the study results obtained and report completed under this project to determine that project objectives were accomplished.

NOTICE OF COMPLETION

29. That because this project provides for planning activities and/or services and no facilities will be constructed, no formal transfer agreement will be necessary. In lieu of a transfer agreement, the IHS will notify the Tribe when IHS participation in the project is complete.

IHS PROJECT TECHNICAL SUPPORT

30. That from the total amount of funds made available to this project, an amount up to 10%, will be utilized by IHS for Project Technical Support (PTS), that the funds be used to cover technical support costs such as technicians' wages, travel and other support costs; clerical support; testing, printing, and other indirect technical support costs associated with the planning and design of IHS sanitation facilities projects.

IHS PROJECT ENGINEERING SUPPORT

31. That, from the total funds made available to this project by EPA, an amount not to exceed \$8,497.50 will be contributed to IHS to cover costs associated with Project Engineering Support services to be provided by IHS. These funds will be used to pay direct project engineering support costs for staff engineering services and contract monitoring services as described in the Project Development Plan. These funds will be contributed upon receipt of a written request from IHS after this agreement has been executed.

TERMS OF AGREEMENT

32. This Agreement shall take effect upon:

- a. Approval by all parties, and
- b. Execution of an IAG between EPA and IHS in accordance with Paragraph No. 18 of this agreement, and
- c. Transfer of EPA funds to IHS as described in Paragraphs No. 2, 17 and 26 of this agreement, and

33. That this Agreement shall remain in effect at least until the earlier of the following dates:

- a. The date when all terms of this Agreement have been met, or
- b. December 31, 2015

34. That the parties reserve the right to withdraw from this Agreement at any time after the agreement takes effect upon at least 30 days advance written notice to the other parties. If this agreement is ended prior to completion of planning activities and/or provision of services, then all such deliverables associated with the completion of planning activities and/or provision of services partially or fully completed at that time shall become the property of the Tribe. Any remaining funds will be returned to the parties in proportion to their financial contribution to the project unless the parties agree otherwise.

35. That at the end of the project, IHS shall submit a project completion package to the Tribe and EPA including a Final Report and a complete financial summary to close out the project. IHS shall retain all project files and financial documents in accordance with audit requirements of IHS.

36. That in the event that the planning activities and/or provision of services cannot be initiated for any reason by June 30, 2015, IHS reserves the right to cancel the project and use the designated IHS project funds for other projects that lack impediments to prompt implementation. If the condition which impeded prompt implementation is resolved following such cancellation, IHS will give high priority to funding the project from future IHS appropriations for sanitation facilities.

CONCURRENCE WITH PROJECT DEVELOPMENT PLAN

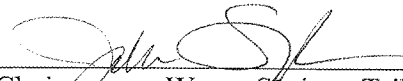
37. That each party to the Agreement has received and concurs with the Project Development Plan upon which this Agreement is based.

IN WITNESS TO THE TERMS OF THIS AGREEMENT, the parties have subscribed their names.

FOR THE CONFEDERATED TRIBES OF THE WARM
SPRINGS INDIAN RESERVATION:

7/10/13

Date

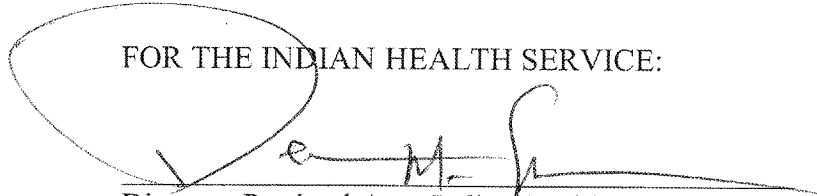


Chairperson, Warm Springs Tribal Council, having been
duly authorized to enter into this Agreement on behalf of
the Confederated Tribes of the Warm Springs Indian
Reservation

FOR THE INDIAN HEALTH SERVICE:

Sept. 12, 2013

Date



Director, Portland Area Indian Health Service,
Department of Health and Human Services.

PROJECT DEVELOPMENT PLAN
SURFACE WATER TREATMENT PLANT
FACILITIES PLAN
FOR THE
CONFEDERATED TRIBES OF THE WARM SPRINGS
INDIAN RESERVATION
OREGON

PL-86-121
IHS PROJECT NO. PO-13-L71

AUGUST 2013

I. Synopsis

The Confederated Tribes of Warm Springs (Tribe) have requested Indian Health Service (IHS) assistance with developing a facilities plan for an overall assessment of its Dry Creek Surface Water Treatment Plant (SWTP). In particular, the plan is needed to address the requirements to comply with the Environmental Protection Agency (EPA) Surface Water Treatment Rule (SWTR) while meeting the potable water demand of the Warm Springs community. The outcome of this planning project will be an Engineering Project Report that will provide a complete assessment of the SWTP, including the current and potential capacity, and prioritized list of capital improvements and replacement alternatives. The total estimated cost of this planning project is \$165,000.00.

This project is a cooperative effort between the Tribe, IHS, and the EPA under the Tribal Set Aside provisions of the Safe Drinking Water Act (SDWA). The Tribe will contract for the described necessary services through Tribal procurement. IHS will provide technical assistance to the Tribe to ensure that the resultant deliverables and recommendations are technically sound, provide a basis for subsequent plant operation and maintenance changes, and justify potential improvements to the facilities. IHS will assist the Tribe in developing solicitation documents, selecting qualified service providers, negotiating scopes of work, and reviewing deliverables. IHS will evaluate project alternatives and prepare an Engineering Project Report (EPR) with input and involvement from the Tribe. This project will be funded with \$93,679.00 in IHS Regular funds and \$71,321.00 in EPA-SDWA funds.

II. Project Background and Need

The SWTP serving the Warm Springs community was constructed in the early 1980's and has about 700 service connections. The SWTP uses conventional treatment (coagulation, flocculation, sedimentation and filtration) to treat water from the Deschutes River. Filtered water is disinfected with chlorine and is pumped from the SWTP into the distribution system and multiple storage tanks.

Over the past thirty years of operations, numerous upgrades to equipment, electrical and controls have been made in the SWTP. The control system was completely replaced in 2000 automating many of the plant's functions. Composite as-builts of the plant have not been maintained, thus complicating the ability to provide maintenance, troubleshoot the operation of the physical plant, or provide a reliable basis for planning purposes.

In September of 2008, IHS and EPA conducted a Comprehensive Performance Evaluation of the SWTP, which identified operational and equipment deficiencies in the plant. The findings of the Comprehensive Performance Evaluation were collected in the "Results of the Comprehensive Performance Evaluation of the Confederated Tribes of Warm Springs Dry Creek Water Treatment Plant" report. Items of specific concern in the report were the SWTP's ability to meet the turbidity and disinfection requirements of the SWTR while operating near its full capacity, 4.3 million gallons per day (MGD).

The Tribe has recently introduced the use of granular activated carbon to mitigate seasonal taste and odor problems that occur during the highest seasonal usage periods from late spring to early fall. In response to the change in treatment chemical, IHS and the Tribe developed a project, IHS Project PO-12-Z00, to evaluate the treatment process and recommend the best suited treatment chemicals to optimize the SWTP performance and compliance with the SWTR. PO-12-Z00 and this project, IHS project PO-13-L71, both evaluate the SWTP, but focus on different aspects of the facility.

- **PO-12-Z00** evaluates the treatment process and chemicals currently used and will help the Tribe effectively manage chemical usage. The results of the study will provide recommendations to optimize the treatment process based on existing SWTP equipment to meet the SWTR and the potable water needs of the community. The scope of recommendations is constrained to changes to the treatment chemicals, sequence of chemical addition, and dosing quantities within the existing plant.
- **PO-13-L71** will evaluate facility improvement needs of the SWTP and outline facility capital improvements and equipment replacement options to ensure that the plant can meet the SWTR. Activities under this project include evaluations and assessments of the SWTP capacity and production potential, mechanical and electrical equipment components, and the facility structure.

This project will expand on the 2008 Comprehensive Performance Evaluation and the efforts of Project PO-12-Z00 to provide a comprehensive study and plan for the Tribe to follow in making upgrades, renovations, and/or improvements to meet the requirements of the SWTR and provide for the potable water needs of the community.

III. Scope of Work

The following tasks outline the scope of this PDP and detail the roles for work to be completed under this project. Work provided through the tasks includes updating the existing records of operational equipment and facility plans, an assessment of the SWTP production capacity and system demand, mechanical and electrical condition assessment, site and structural assessment of facilities, and estimating the operational costs of the existing plant and the life cycle cost of the proposed alternatives. All of the findings and results of the completed tasks will be reported in an EPR, which will include recommendations on improvements, upgrades, renovations, and/or replacements of the facilities. The EPR will outline a scope and estimated costs for capital improvement alternatives.

The Tribe will procure the services of a consultant to complete technical and labor intensive information gathering and analysis of the SWTP. Existing information on the SWTP will be made available to the consultant upon request. The Tribe and IHS will work to provide specific and relevant information to the consultant to expedite the development of the composite as-built set. IHS will use the results of the tribally procured services to develop an EPR and present alternatives for capital improvements.

The Tribe will be responsible to coordinate and manage activities with the consultant. IHS will provide technical assistance throughout the project and provide the Request for Proposal (RFP) for selection of a qualified consultant as well the project scope of technical requirements and criteria for completion of services. Additionally, IHS will act as a reviewer and provide recommendations during the RFP process, provide technical review for each task, and participate in meetings and discussions with the Tribe and consultant. IHS will compile the information developed through the PDP tasks and develop the EPR.

Delivery of each of the tasks provided by the Tribe may be provided through multiple targeted procurement efforts. This will ensure the appropriate specialist will be involved on each task.

Task #1 – Compile and Provide Composite As-Builts of Existing Facilities

Under this task the Tribe will utilize technical requirements provided by IHS to procure the services of a consultant selected through the RFP process to provide a full and complete composite as-built set of the SWTP interior and exterior including all mechanical and electrical components. The task is a significant undertaking as the plant is over 30 years old, and the original as-built drawings have not been updated as major and minor alterations have occurred. The design firm of record is no longer in business, and the drawings are not available in an electronic format. The work under this project will involve developing electronic drawings from the original as-built drawings, field-verifying plant alterations that have occurred over 32 years, and locating and cataloging critical process equipment. This information is necessary for subsequent tasks under this project. Additionally, the development of the drawings has value to the Tribe for their day-

to-day management, maintenance and operation responsibilities of the surface water treatment plant.

Sub-Tasks

- Consolidate existing as-builts and plans from alteration projects into one set. Develop an electronic (AutoCAD) drawing.
- Identify missing, incomplete, or incorrect information through field verification.
- Ensure correct identification of currently existing mechanical and electrical equipment. Catalog the salient attributes of equipment on the drawings.
- Update drawings of both interior and exterior of the SWTP and entire compound (i.e. location of septic system, surface water intake and discharge, and backwash ponds).

Deliverable:

IHS: Technical requirements for RFP and selection of consultant. Technical assistance and review.

Tribe: Full and complete composite as-built plans of SWTP through the Tribally procured consultant.

Task #2 – SWTP Capacity, Production, and Demand Assessment

Under this task the Tribe will utilize technical requirements provided by IHS to procure the services of a consultant selected through the RFP process to assess the SWTP's capacity and production of treated water under its current operational state. The plant capacity is the theoretical amount of water the plant can treat under optimal conditions. Under this task, the impacts of variable raw water quality characteristics, staffing capabilities and major treatment component performance will be discussed.

Sub-Tasks

- Determine SWTP capacity for current treatment operations.
- Compile current production data of SWTP and determine average, peak, and maximum daily demands on the SWTP.
- Determine the impact of changing raw water quality characteristics, available staff and major treatment and production components on production and provide comparison to full production capacity potential under optimal conditions.

Deliverable:

IHS: Technical requirements for RFP and selection of consultant. Technical assistance during task progress and review of results.

Tribe: SWTP capacity, production, and demand assessment through the Tribally procured consultant.

Task #3 – Mechanical and Electrical Condition Assessment

Under this task the Tribe will utilize technical requirements provided by IHS to procure the services of a consultant selected through the RFP process to provide full assessment of the condition, functionality, and appropriateness of the mechanical and electrical equipment with regard to treatment, production, distribution and monitoring of SWTP operations. Recommendations on improvements, replacements, or upgrades will be made based on continued use of the existing facilities. The results of this task will provide a basis for which the Tribe can anticipate needed funds for equipment maintenance, repair, and replacement that IHS and the Tribe can utilize for developing capital improvement project alternatives.

Sub-Tasks

- Assess age, condition, and remaining useful life of mechanical equipment and electric controls.
- Identify make, model, and technical specifications of all equipment.
- Determine if equipment in use meets the needs of the SWTP as operated and required by the SWTR.
- Make recommendations for equipment replacement including estimated costs.
 1. Alternatives comparison leading to recommendations;
 2. Alternatives compared shall range from no action; leave as-is to full replacement of facilities and equipment.
- Provide priority hierarchy of recommendations based on defined criteria:
 1. Equipment reliability and remaining useful life;
 2. Impacts of equipment failure on SWTP operations;
 3. Impacts of equipment upgrades and improvements on SWTP production and capabilities to meet finished water quality required by SWTP.

Deliverable:

IHS: Technical requirements for RFP and selection of consultant. Technical assistance during task progress and review of results.

Tribe: SWTP mechanical and electrical equipment assessment and analysis through the Tribally procured consultant.

Task #4 – Site and Structural Assessment

Under this task the Tribe will utilize technical requirements provided by IHS to procure the services of a consultant selected through the RFP process to provide an assessment of the overall site and structure housing the SWTP and recommend improvements and upgrades. The results of this task will provide a basis for which the Tribe can plan for maintenance and repair and capital improvements. Further, the assessment will include recommendations on the potential and feasibility for repair and upgrades of the SWTP structure compared to full replacement of the facilities.

Sub-Tasks

- Assess interior structure of SWTP for integrity, condition of construction materials, storage of treatment chemical materials, and safety of flooring, walls, stairs, and lighting based on mandatory and/or established industry standards (i.e. International Building Code, EPA and Federal regulations on hazardous materials storage, OSHA).
- Assess exterior of SWTP for condition of construction materials and safety including roof, siding/paint, access points, fencing, and paved areas.
- Recommend areas for improvement and identify options for making the improvements.
 1. Alternatives comparison leading to recommendations;
 2. Alternatives compared shall range from no action; leave as-is to full replacement of facilities and equipment;
 3. Full replacement alternative shall take into account space required and availability of land for the Tribe's use in such an endeavor.

Deliverable:

IHS: Technical requirements for RFP and selection of consultant. Technical assistance during task progress and review of results.

Tribe: SWTP overall site and structural assessment and analysis through the Tribally procured consultant.

Task #5 – Life Cycle Cost Assessment

Under this task the Tribe will utilize technical requirements provided by IHS to procure the services of a consultant selected through the RFP process to develop the projected life cycle cost, including the operation and maintenance burden for each of the major capital improvement alternatives. The results of this task will provide a basis for which the Tribe can plan for operational and staffing needs for the SWTP as well as anticipate needed funds for maintenance, repair, and capital improvements.

Sub-Tasks

- Estimate necessary staffing needs to operate SWTP for each alternative.
- Determine cost of SWTP operations under actual and optimal conditions for each alternative.
- Formulate comprehensive annual budget for SWTP operations for each alternative.
- Determine the life cycle cost of for each alternative.

Deliverable:

IHS: Technical requirements for RFP and selection of consultant. Technical assistance during task progress and review of results.

Tribe: SWTP Operation and Maintenance Plan through the Tribally procured consultant.

Task #6 – Engineering Project Report

With involvement and input from the Tribe, IHS will prepare the Engineering Project Report (EPR) which will summarize findings, outline priority improvements, present project alternatives, and illustrate impacts of priority improvements in terms of meeting the SWTR, providing capacity to meet peak demand needs, and economic benefits and impacts of improvements. IHS will provide the EPR and final recommendations utilizing the results and technical review of Tasks 1-5.

Sub-Tasks

- Provide summary of SWTP production data including actual, calculated, and estimated future production needs.
- Provide overview assessment of facility's ability to meet current and future demand as constructed and equipped.
- Present a detailed summary of life cycle costs under current conditions and the proposed capital improvements alternatives.
- Present alternatives for renovation or replacement of the SWTP.
- Recommend immediate low or no cost actions to improve SWTP performance that can be taken by the Tribe and recommend long-term capital improvements for the Tribe to plan and pursue.

Deliverable:

Tribe: Full results of tasks #1-5 and accompanying technical memorandums and/or reports.

IHS: Engineering Project Report.

IV. Project Engineering Support

The Indian Health Service will provide project engineering support (PES) services. These services will be provided by IHS professional staff and will include the following general categories of activities.

1. Technical Engineering Assistance
 - a. Engineering review of project activity progress
 - b. Engineering review of final product for each task
2. Professional Services Related Engineering and Contract Management Services
 - a. Professional Services Related Technical Engineering Assistance
 - b. Recommendation for acceptance of consultant services based on task scope and requirements
 - c. Recommendation for final acceptance of all task results based on task scope and requirements

Funds to cover the cost of these services will be provided by EPA. These funds will be contributed to IHS as described in the Memorandum of Agreement.

V. Environmental Plan

The data collected and the results of the above tasks (pre-design activities) will be used to assist the Tribe and/or IHS to provide a more thorough environmental review and determination. The activities under this project development plan are typical IHS technical assistance yet are documented to give the entire project its best chance of success with concrete obligations by the project parties. The existence of a planning project does not assure a construction project.

Therefore, in accordance with the Department of Health and Human Services policies and procedures in General Administration Manual, Part 30, the Council on Environmental Quality regulations at 40 CFR 1500-1508, and procedures of the Indian Health Service published in the Federal Register, Vol. 58, No. 3, Page 569, these project development activities belongs to category of actions "E", which normally do not significantly impact the human environment.

If unanticipated conditions or factors are identified during the course of the project that would affect this determination, work on the affected portion will be halted and the appropriate parties notified. Work on the project or that portion of the work so affected will resume only upon resolution of the problem.

VI. Risk Management

The following are the primary potential risks or uncertainties associated with this project. The purpose of this planning and design project is to eliminate these uncertainties prior to the Tribe budgeting construction funds.

1. Risk: The facilities plan is focused on the SWTP and does not address the wider issues associated with the distribution system and water storage system.
Mitigation: The EPR will place the recommended SWTP improvements in context. IHS will continue to discuss other needed O&M improvements through the technical assistance it provides through the Tribal Utility Consultant.
2. Risk: Recommendations to make capital improvements to the SWTP may be beyond the Tribe's resources to implement. Consultant may not properly consider the available resources and may make unrealistic recommendations.
Mitigation: IHS will prepare the technical requirements of Tasks #1 through #5. These requirements will clearly outline the limits of the consultant's responsibilities. Additionally, the Communications Plan in Section VIII provides for a core team of IHS and Tribal personnel to meet separately to keep the project on track.
3. Risk: Consultant may not have understanding of the funding and project development constraints of EPA and IHS funding programs, resulting in recommendations that may not be compatible, practical, or implementable through these programs.
Mitigation: IHS will prepare the EPR with Tribal input and involvement to compile and integrate all the project findings and deliverables while ensuring that recommendations made are eligible for and meet EPA and IHS funding and program requirements.
4. Risk: Only a limited field of large firms can provide the full range of procured services described in Tasks #1 through #5.
Mitigation: Procurement of tasks will be grouped to access appropriately qualified specialty consultants.

VII. Task Assignment & Schedule

The IHS resources committed to this project include: Field Engineer and Project Technical Support. Work is planned to commence upon approval of this development plan. It is of utmost importance that this work be complete before July 2015 so that this design may be added to the SDS inventory.

Task Schedule

Task #1 – Compile Updated and Complete SWTP As-Built/Drawing of Record	July 2014
Task #2 – SWTP Capacity Assessment	September 2014
Task #3 – Mechanical and Electrical Condition Assessment	November 2014
Task #4 – Site and Structural Assessment	January 2015
Task #5 – Life Cycle Cost Assessment	March 2015
Task #6 – Engineering Project Report	May 2015

VIII. Communications Plan

The following includes a list of key project stakeholders. IHS and the Tribe will, at a minimum, conduct project coordination meetings after each of the tasks outlined in the scope of work. If a meeting cannot be scheduled IHS will request updates and reports to be sent to the IHS field office. The IHS Project Manager is responsible for carrying out project communication on behalf of IHS.

Confederated Tribes of Warm Springs (CTWS) Contacts

- Tribal Engineer/Project Manager, CTWS Public Utilities
- Crew Supervisor, CTWS Public Utilities
- SWTP Chief Operator, CTWS Public Utilities
- General Manager, CTWS Public Utilities
- Contract Officer, CTWS Contracting and Purchasing

IHS Contacts

- Tribal Utility Consultant
- Project Engineer
- District Engineer

IHS and the Tribe will conduct meetings both with and independent of the awarded consultant before acceptance of the work of each completed task. The discussions will serve to ensure that the integrity of the project scope is maintained and that the consultant's work is on task with the required deliverables and that the direction of the project is contained within the project scope and the Tribe's needs and capabilities.

IX. Procurement Plan

The Confederated Tribes of Warm Springs will procure the services of specialty service contractors to provide the deliverables of Tasks #1-5 of this project. IHS will develop and provide the RFP to the Tribe for this procurement effort.

Multiple targeted procurements may be sought to keep a direct line of communication between the Tribe and the selected consultant. This will have two desirable effects: 1) reduce complexity of communication and task review by procuring a specialized consultant appropriate for each task and minimizing subcontracting; and 2) provide for progress review upon completion of each task to ensure the integrity of the scope and project are maintained to full project completion.

The following services will be procured through the RFP per Addendum A. Architect/Engineer (A/E) services will be solicited and selected based on qualifications. The services are detailed under the Scope of Work. IHS will work closely with the Tribe in negotiating contract award and providing technical review of the consultant's delivery tasks within the scope of the contract and project.

- Compile Updated and Complete SWTP As-Built/Drawing of Record
- SWTP Production Capacity and Demand Assessment
- Mechanical and Electrical Equipment Assessment
- Overall Site and Structural Assessment
- Life Cycle Cost Assessment

X. Quality Design Plan

In order to control the quality of the planning and design efforts undertaken as part of this project, IHS and the Tribe will complete the following:

- Conduct regular meetings with CTWS Public Utilities, professional consultant, and IHS staff.
- Review proposed findings and conclusions of the tasks, upon completion, to ensure the needs of the Tribe and the Scope of Work are being met.
- Conduct a final review throughout the implementation of and at the end of each task and deliverable to assure all aspects of this project development plan were completed.

XI. ADP Data

Type of Home	E1	H1	E2
Number of Homes	500	130	65
ADP Code* (w,ww,sw)	SZZ	SZZ	SZZ

E1=Indian Housing; H1=HUD Housing; E2=Non-residential units
SZZ=Engineering Study (No Sewage or Solid Waste Services Provided)

XII. Cost Estimate and Budget

Item	Description	Qty	Unit	Unit Cost	Total Cost
1	Update/Complete SWTP Drawing of Existing Facilities	1	LS	\$42,000.00	\$42,000.00
2	SWTP Capacity Assessment	1	LS	\$25,000.00	\$25,000.00
3	Mechanical and Electrical Assessment	1	LS	\$43,000.00	\$43,000.00
4	Site and Structural Assessment	1	LS	\$10,000.00	\$10,000.00
5	Life Cycle Cost Assessment	1	LS	\$5,000.00	\$5,000.00
Professional Services Subtotal					\$125,000.00
Contingency (10%)					\$12,500.00
Professional Services Subtotal					\$137,500.00
Tribal Administration (3%)					\$4,125.00
(Maximum Contribution to Tribe) Tribally Procured Services Total					\$141,625.00
IHS Project Technical Support (10% of Tribally Procured Services Total)					\$14,162.50
IHS Project Engineering Support (6% of Tribally Procured Services Total)					\$8,497.50
Total Project Cost					\$164,285.00
TOTAL PROJECT COST (ROUNDED)					\$165,000.00

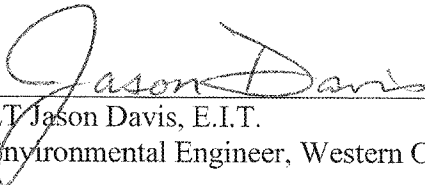
Total Project Cost (Rounded) \$165,000.00

Maximum IHS Contribution to the Tribe \$141,625.00

FUNDING SUMMARY


EPA SDWA Tribal Set-Aside	\$ 71,321.00
IHS Regular	\$ 93,679.00
Total Funds	\$165,000.00

XIII. Approvals***Prepared By:***


LT Jason Davis, E.I.T.
Environmental Engineer, Western Oregon Field Office


8/21/13
Date

Reviewed By:

 2013.08.21 08:32:37
-07'00'
CDR Craig Haugland, P.E.
Senior Environmental Engineer, Port Angeles Field Office

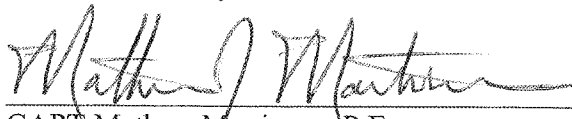
08/21/2013
Date

Reviewed By:

 Matt Rasmusson, P.E.
2013.08.21 08:46:51 -07'00'
CDR Matthew Rasmusson, P.E.
District Engineer, Olympic District Office

08/21/2013
Date

Recommended By:


CAPT Mathew Martinson, P.E.
Acting Director, DSFC, Portland Area Indian Health Service


8/21/13
Date

Reviewed By:


LCDR Krista Pihlaja, P.E.
Area NEPA Coordinator, OEH&E, Portland Area Indian Health Service

8/22/13
Date

Approved By:


Mr. Richard R. Truitt, P.E.
Associate Area Director, OEH&E, Portland Area Indian Health Service

8/22/13
Date

Message

From: Ellen H. Grover [ehg@karnopp.com]
Sent: 9/27/2019 10:15:12 PM
To: Baron, Adam [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=563ef058707d4930868c6cf1e0828a43-Baron, Adam]
CC: Alyssa Macy [alyssa.macy@wstribes.org]; michele stacona [michele.stacona@wstribes.org]; Nancy J. Hanson [njh@karnopp.com]; Brenda L Collette [BLC@karnopp.com]; Thurmon, Clarke [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=4ee51ecf20b146d18fb2874c6b0d1b31-Thurmon, Clark]
Subject: RE: CTWS Compliance Orders

Thanks Adam. I sent the letter to Michele and Alyssa this morning and am awaiting Council action. (We may have an earlier date for the engineering assessment in the letter, but at least it is not a later date and we can all be on the same page based on this email). Thanks, Ellen

Ellen Grover | Karnopp Petersen LLP
Partner

v: 541.382.3011 | e: ehg@karnopp.com

From: Baron, Adam [mailto:Baron.Adam@epa.gov]
Sent: Friday, September 27, 2019 3:11 PM
To: Ellen H. Grover <ehg@karnopp.com>
Cc: Alyssa Macy <alyssa.macy@wstribes.org>; michele stacona <michele.stacona@wstribes.org>; Nancy J. Hanson <njh@karnopp.com>; Brenda L Collette <BLC@karnopp.com>; Thurmon, Clarke <Thurmon.Clarke@epa.gov>
Subject: RE: CTWS Compliance Orders

Ellen –

Clarke is out of pocket for the next couple days due to some unforeseen circumstances, but he asked me to respond to this message for now. First, I just sent an email confirming the revised due date for 120 day Engineering Assessment is November 19, 2019. Second, EPA agrees that the due date on the air scour system repair for the river intake can be controlled by the terms of the AOC alone should they be re-negotiated between EPA and the Tribe.

If you need this message to come from EPA counsel, please let me know and I can find someone to fill in for Clarke.

Thanks.



Adam Baron
Drinking Water Enforcement Officer
Field, Data, & Drinking Water Enforcement Section
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region 10
1200 Sixth Avenue, Suite 155
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Office (206) 553-6361
baron.adam@epa.gov

From: Ellen H. Grover <ehg@karnopp.com>
Sent: Wednesday, September 25, 2019 10:56 AM
To: Thurmon, Clarke <Thurmon.Clarke@epa.gov>
Cc: Baron, Adam <Baron.Adam@epa.gov>; Alyssa Macy <alyssa.macy@wstribes.org>; michele stacona <michele.stacona@wstribes.org>; Ellen H. Grover <ehg@karnopp.com>; Nancy J. Hanson <njh@karnopp.com>; Brenda L Collette <BLC@karnopp.com>
Subject: CTWS Compliance Orders
Importance: High

Hi Clarke:

Adam and I discussed the status of extension letters for the EPA orders (Administrative Compliance Order on Consent and the Emergency Order) with respect to the Warm Springs water system. Adam is meeting with CTWS staff and leadership today to confirm the status of actual compliance items in the AOC and develop, hopefully, a consensus on the applicable extension date for the AOC Order. I hope I can run a draft of the letter by you before it goes final but it would rely on Section 5.8 of the AOC for this request.

We also discussed that the Emergency Order had a later start date. It is my understanding that this start date for compliance of the Emergency Order is July 15, 2019. Accordingly, I believe the 120 day assessment would be due on or near November 11 (I haven't double checked or docketed this yet). **Can you please confirm in writing EPA's understanding of the start date and current compliance date for that?** Adam did confirm on the phone generally (but not specific dates). Because we will not be out of compliance until that November date and because we need more information to establish a reliable extension date, I would propose that we develop a second letter of extension for the Emergency Order. Please let me know if you see a problem with that approach.

Last, there is one item that appears in both the Emergency Order and the AOC. It's the river intake scour system item (Section 3.29 of Emergency Order and Section 4.1(q)) of the AOC. I would propose that we include a footnote in our AOC extension letter requesting that the extended AOC date control compliance for purposes of both orders. Please let me know if we should handle that differently.

Thanks and I hope all is going well for you. Ellen

Ellen Grover
Partner



360 SW Bond St, Ste. 400 | Bend, OR 97702
office: 541.382.3011 | email: ehg@karnopp.com
web: www.karnopp.com | blog: www.karnopp.com/blog



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dissemination, distribution or copying of the transmittal is STRICTLY PROHIBITED. If you have received this e-mail in error, please notify us immediately by telephone (call us collect at 541.382.3011). Thank you.

Message

From: Ellen H. Grover [ehg@karnopp.com]
Sent: 9/20/2019 5:53:41 PM
To: Baron, Adam [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=563ef058707d4930868c6cf1e0828a43-Baron, Adam]
CC: Thurmon, Clarke [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=4ee51ecf20b146d18fb2874c6b0d1b31-Thurmon, Clark]; Alyssa Macy [alyssa.macy@wstribes.org]
Subject: RE: Notes from the weekly SDWA Orders compliance check-in with Warm Springs

Understood. Thank you.

Ellen Grover | Karnopp Petersen LLP
Partner

v: 541.382.3011 | e: ehg@karnopp.com

From: Baron, Adam [mailto:Baron.Adam@epa.gov]
Sent: Friday, September 20, 2019 9:35 AM
To: Ellen H. Grover <ehg@karnopp.com>
Cc: Thurmon, Clarke <Thurmon.Clarke@epa.gov>; Alyssa Macy <alyssa.macy@wstribes.org>
Subject: RE: Notes from the weekly SDWA Orders compliance check-in with Warm Springs

Of course.

Travis explained to me the tricky part is going to be identifying a date they actually can hit with contracting uncertainties. Without some sort of milestone and accompanying justification, it makes granting extensions harder. My management has been clear they are only interested in doing this once so important to find that date somehow/ some way.



Adam Baron

Drinking Water Enforcement Officer
Field, Data, & Drinking Water Enforcement Section
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region 10
1200 Sixth Avenue, Suite 155
Seattle, Washington 98101
Office (206) 553-6361
baron.adam@epa.gov

From: Ellen H. Grover <ehg@karnopp.com>
Sent: Friday, September 20, 2019 9:27 AM
To: Baron, Adam <Baron.Adam@epa.gov>
Cc: Thurmon, Clarke <Thurmon.Clarke@epa.gov>; Alyssa Macy <alyssa.macy@wstribes.org>
Subject: RE: Notes from the weekly SDWA Orders compliance check-in with Warm Springs

OK. Thanks Adam. I was just emailing Alyssa on how she'd like to handle! I think probably a call between Clarke and I to identify the extension requests might be the next best step. If we have factual questions we can follow up with you and Alyssa? Thanks, Ellen

Ellen Grover | Karnopp Petersen LLP

Partner

v: 541.382.3011 | e: ehg@karnopp.com

From: Baron, Adam [<mailto:Baron.Adam@epa.gov>]

Sent: Friday, September 20, 2019 9:20 AM

To: Ellen H. Grover <ehg@karnopp.com>

Cc: Thurmon, Clarke <Thurmon.Clarke@epa.gov>

Subject: FW: Notes from the weekly SDWA Orders compliance check-in with Warm Springs

Ellen –

I'll leave it to you and Clarke to have the necessary lawyerly conversation, but you may want to advise your client on this matter as the Tribe will almost certainly be in violation of both EPA SDWA Orders in the near future.

Happy to be on the call with you two to discuss.



Adam Baron

Drinking Water Enforcement Officer
Field, Data, & Drinking Water Enforcement Section
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region 10
1200 Sixth Avenue, Suite 155
Seattle, Washington 98101
Office (206) 553-6361
baron.adam@epa.gov

From: Baron, Adam

Sent: Friday, September 20, 2019 9:18 AM

To: 'Travis Wells' <travis.wells@wstribes.org>; 'Chico Holliday' <chico.holliday@wstribes.org>; 'Alyssa Macy' <alyssa.macy@wstribes.org>

Cc: Thurmon, Clarke <Thurmon.Clarke@epa.gov>; Contreras, Peter <Contreras.Peter@epa.gov>; 'Ellen H. Grover' <ehg@karnopp.com>; Wilson, Wenona <Wilson.Wenona@epa.gov>; Bill Dunbar (dunbar.bill@epa.gov) <dunbar.bill@epa.gov>

Subject: Notes from the weekly SDWA Orders compliance check-in with Warm Springs

All –

See below for summary of today's meeting notes w/ high level summary for those of you reading quickly.

Also below are the previous week's notes for reference (which was a couple weeks back to Baron travel).

Call Notes – September 18, 2019:

High level messages:

The lack of in place contracts will likely cause the Tribe to be out of compliance with major requirements of both the Emergency Order and Order on Consent including the 120 day engineering assessment and correction of remaining significant deficiencies due by Oct 1. Similar lack of contracting also means the Tribe has no specific schedule to finish phase two of the pressure relieve valve (PRV) installation project – four PRVs remain to be installed. Although the Tribe has grant money from federal partners, the Tribe lacks the capacity currently to enter into contracts to spend that money on projects including complying with both EPA Orders.

Baron is working with the Tribe to secure a letter asking for extensions of these key requirements under the Order before the Tribe is actually out of compliance with the Orders.

The next tribal funding summit is scheduled next Tuesday, September 24th, with several high-level officials from multiple state and federal agencies participating in person.

Baron will brief the Tribal Council on the following Wednesday, September 25th. Talking points will include outcomes from the funding summit and discussion of the current lack of contracting causing the Tribe to likely miss requirements under the Order.

Detailed Call Notes – September 18, 2019:

1. Distribution system

- Status of emergency distribution system repairs and project for restoring service - contracts not completed for phase II, parts were just ordered. 3 or 4 weeks before the works is actually done. Contracts approved yesterday. PDG just completed order for parts. BIA money still waiting for contract management from PDG, waiting for 160K. Until that is in place, HUD/ BIA money still sitting there. Unknown on project timeline. Going through the process on asking for extensions to grants.
 - Did have a conversation about projects getting done with Alyssa, but no info on request for extension. Travis went to Michelle Stacona directly. Underscored the need for a letter requesting extension. Travis feels like he won't have dates/ timelines until he talks to PDG when they are under contract.
 - 120 assessment not going to get done either because not under contract.
 - Any updates on monitoring/ sampling – IHSs, Ladd to come out October 2nd to verify new RTCR sites, also doing planning for leak detection system in distribution system. IHSs has money set aside for this project - vendor Century West.
 - Any updates on alt. water provisions – Alyssa submitted final emergency plan and waiting for review/ signature from Baron.
 - Status of contracts to meet repairs required to storage tanks in compliance order, due Oct 1 - See above
- #### 2. Plant operations - after actions taken by adding a SOP for inhouse turbidity event. Also SOP for chlorination system - how to trouble shoot and contract for annual maintenance and extra parts. SOP on how to shut down and start up plant. SOP on how to grab data off of turbidimeters - CMS etc.
1. Steve to retire today, Ronnie to take lead, adding another utility distribution to cover until Steve's replacement is on line. Part of reason for new SOPs. Does not have operator 1 yet. Steve Stewart didn't pass op 1 test two weeks back but can take again.

3.

- Evidence of sedimentation tank cleaned - done

- Shift log conversation and getting coagulation SOP in place - done.
 - Training operators on event response requirements in emergency order - done
 - Status of SOP changes/ contracts to meet repairs required at water plant in compliance order, due Oct 1 – see above
4. Other
- Briefing on 25th wasn't on Travis's calendar yet. Now added. Looking at options to meet with Travis/ Chico/ Operators after briefing. No new equipment to look at – perhaps review SOPs.

Call Notes – August 21, 2019:

High level messages:

After finishing 4 of the 5 planned pressure relief valves (PRVs) installation, the Tribe submitted on August 7th distribution monitoring data showing negative for e.Coli and at least baseline residual chlorine levels. EPA concurred with the Tribe's recommendation to lift the boil water notice and the tribe did so that same day. The 5th PRV is awaiting a specialized piece of piping that will need to be custom cut. Once received, the Tribe plans to issue another boil water notice in about a month while the system is depressurized to install that last valve along with two others. The Tribe is no longer providing alternative water. Warm Springs will be using HUD grants to recoup their costs for this work.

On 8/13/19 Baron traveled to Warm Springs for a monthly update to brief the Warm Spring Tribal Council on the Tribe's drinking water issues including current compliance status under both the SDWA Emergency Order and Compliance Order. Baron advised the Council that their staff had now started implementing the coagulation SOP and recently submitted the alternative water plan to EPA for review as required under the Emergency Order. Alyssa Macy also provided a funding matrix to explain how the different sources of funding were being utilized, which Travis walked the Council through piece by piece. Alyssa also noted she's going to use some discretionary funding to contract PDG to help scope and enter contracts to spend down grant money already received in a more expedited manner.

The next key requirement of the Emergency Order is the 120-day engineering assessment. The Tribe has secured independent funding for the assessment and begun the scoping of that contract in dialogue with both EPA and the contractor. 30 days after the assessment is finished, the Emergency Order requires the Tribe to provide EPA a plan on how it will meet the assessment's recommendations. Warm Springs has funding for this assessment, and it will be performed by PDG, same firm that did the distribution system stabilization work. PDG and EPA have had some initial scoping conversations on this assessment.

EPA (Baron) is tentatively scheduled to go down again on September 23rd for the next monthly update.

Next funders meeting not yet scheduled.

Detailed Call Notes – August 21, 2019:

2. Distribution system

- Status of emergency distribution system repairs and project for restoring service - a lot of folks have a mistrust of the water. About the time people get used to it, then WS will be under another BWN for next PRV fix. Still looking for PDG to order custom T joint - 14 inch to 12 with 4 inch valve. George street, southeast, and Kah-ne-Ta. All about day long installs. Some taste/ odor complaints due to algae spikes typical of summer, trying to work on with activated carbon to reduce. Alt. water shut down last Thursday. Pressure readings - maintaining in some areas, filling up reservoirs. But loads of people watering their yards, use up. Meters required on since '95. WS have the authority to charge by volume but never done in the past. Will need to address in the future - fee structure. Fee structure as part of budget conversations. Travis will pitch at least charging flat fee for water, sewer, or garbage to Tribal Council. Also helps eligibility for RSF loans. Still looking for PDG to order custom T joint - 14 inch to 12 with 4 inch valve. George street, southeast, and kenata. All about day long installs.
- Any updates on monitoring/ sampling – WS needs to contact Ladd at IHSs to ensure new sampling point they've added for RTCR sampling is appropriate – old one unserviceable due to house fire. Noted some low levels of chlorine residual on 3 samples sites. Seemed likely due to sampling error. Travis will go over sampling protocol with his folks.
- Any updates on alt. water provisions – Adam needs to get back to Alyssa with comment.
- Status of contracts to meet repairs required to storage tanks in compliance order, due Oct 1 - no funding. Asked for EPA help. Adam will contact Alyssa about funding. BIA or HUD money doesn't seem to fit here. Fabricator on contract though for access ladders.

5. Plant operations

- Evidence of sedimentation tank cleaned - done
- Shift log conversation and getting coagulation SOP in place - jar testing improving, making process tweaks based on findings.
- Training operators on event response requirements in emergency order - done
- Status of SOP changes/ contracts to meet repairs required at water plant in compliance order, due Oct 1 – see above

6. Other

- Possible next trip for Baron down on 23rd.



Adam Baron

Drinking Water Enforcement Officer
Field, Data, & Drinking Water Enforcement Section
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region 10
1200 Sixth Avenue, Suite 155
Seattle, Washington 98101
Office (206) 553-6361
baron.adam@epa.gov

From: Baron, Adam

Sent: Wednesday, August 21, 2019 5:46 PM

To: 'Travis Wells' <travis.wells@wstribes.org>; 'Chico Holliday' <chico.holliday@wstribes.org>; 'Alyssa Macy' <alyssa.macy@wstribes.org>

Cc: Thurmon, Clarke <Thurmon.Clarke@epa.gov>; Contreras, Peter <Contreras.Peter@epa.gov>; 'Ellen H. Grover' <ehg@karnopp.com>; Wilson, Wenona <Wilson.Wenona@epa.gov>; Bill Dunbar (dunbar.bill@epa.gov) <dunbar.bill@epa.gov>

Subject: Notes from today's weekly SDWA Orders compliance check-in with Warm Springs

All –

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High level messages:

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- Any updates on alt. water provisions – Adam needs to get back to Alyssa with comment.
- Status of contracts to meet repairs required to storage tanks in compliance order, due Oct 1 - no funding. Asked for EPA help. Adam will contact Alyssa about funding. BIA or HUD money doesn't seem to fit here. Fabricator on contract though for access ladders.

1. Plant operations

- Evidence of sedimentation tank cleaned - done
- Shift log conversation and getting coagulation SOP in place - jar testing improving, making process tweaks based on findings.
- Training operators on event response requirements in emergency order - done
- Status of SOP changes/ contracts to meet repairs required at water plant in compliance order, due Oct 1 – see above

2. Other

- Possible next trip for Baron down on 23rd.

Detailed Call Notes – August 7, 2019:

1. Distribution system

- Status of emergency distribution system repairs and project for restoring service
 - Of the 5, 2 are replaced for vault service Industrial complex (Monday), and Catholic church vault to serving agency area (Tuesday), now working on George street vault, then tomorrow repair vaults for Greely heights and West

Hills. Greely and West Hills already Clay-type valves - just need to be rebuilt. So 5 of the 7 in by end of the week. George street vaults is the main issue - line was bigger - 12" line, thought was 10". A 12" to 10" reducer with a 4" bypass needs to be requisitioned, hopefully on site tomorrow, but may be a custom piece that needs to be cut. Also ran in to class 300 flange - different bolt pattern from 150 flange. Reduction in size shouldn't reduce flow because already reduced to 8" inch in side vault.

- Any updates on monitoring/ sampling - intent was to start sampling Monday for first round of Bacti, second round on Wednesday. But might be delayed. **EPA confirms that all is needed are two rounds of sampling showing non-detect on Bacti and at least .2 residual chlorine from the following bact monitoring locations: WS-04, WS-07, WS-10, WS-13, WS-14, WS-16, WS-19, WS-22, WS-25, WS-28, WS-30, WS-32, WS-35. See WQMP for location ID.**
 - Any updates on alt. water provisions - still open and serving water
 - Status of contracts to meet repairs required to storage tanks in compliance order, due Oct 1 - talked to Ladd about over structure on top of tank - Ladd said he was okay, but Adam will verify in writing. Adam requested some sort of drawing from Travis that EPA could review - Travis will send. No update for IHSs on scope of work with Derrick. Need to get bids out in order to use USDA dollars. Contractor officer Tribal employment rights office to negotiate contract. This is all screen repair and water reroute, HVAC, pump replacement. Have plans from IHSs but not yet scope of work to put out bids for contracts. EPA will review status when on site next week. Travis sent email with plan from Derick at IHSs for background.
2. Plant operations
- Evidence of sedimentation tank cleaned - done
 - Shift log conversation and getting coagulation SOP in place - SOP not being implemented. Baron relayed conversation with Steve Courtney on Monday, where Steve wouldn't do it without on-site training. Baron said they are required to start and EPA will trouble shoot with them if they get stuck. Chico noted they are certified operators and should know how to do it. Need to have evidence that they are doing it by briefing on Monday. Must be accountable for their workload. **Otherwise, Baron will report out that they are in violation with the requirement of the 1431 Order.**
 - Training operators on event response requirements in emergency order - done
 - Status of SOP changes/ contracts to meet repairs required at water plant in compliance order, due Oct 1 - see above.



Adam Baron

Drinking Water Enforcement Officer
Field, Data, & Drinking Water Enforcement Section
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region 10
1200 Sixth Avenue, Suite 155
Seattle, Washington 98101

From: Baron, Adam

Sent: Wednesday, August 07, 2019 3:23 PM

To: Travis Wells <travis.wells@wstribes.org>; Chico Holliday <chico.holliday@wstribes.org>; Alyssa Macy <alyssa.macy@wstribes.org>

Cc: Thurmon, Clarke <Thurmon.Clarke@epa.gov>; Contreras, Peter <Contreras.Peter@epa.gov>; Ellen H. Grover <ehg@karnopp.com>; Wilson, Wenona <Wilson.Wenona@epa.gov>; Mark MacIntyre (<Macintyre.Mark@epa.gov>)

Subject: RE: Notes from today's weekly SDWA Orders compliance check-in with Warm Springs

All –

See below for summary of today's meeting notes w/ high level summary for those of you reading quickly.

Also below are last week's notes for reference.

Call Notes – August 7, 2019:

High level messages:

Distribution system construction is underway, with 2 of the 7 pressure relief valves (PRVs) already in place. Original plan was to have all the main 5 PRVs/ vaults done by end of this week, which is still possible, but a parts issue may cause repair to run into next week. Once work is finished, pipes can be re-pressurized, flushed, tested, and brought back into service with boil water notice lifted depending on test results. This could happen as early as next Wednesday. Alternative water station and boil water notice will remain in place until then. Warm Springs will be using HUD grants to recoup their costs for this work.

Warm Springs utilities have been appropriately focused on distribution system stabilization. Accordingly, they have fallen behind on the following 1431/ 1414 Orders' requirements: 1) Alt. water/ Emergency plan updated with new SOPs and clearer alt water provisions, 2) Coagulation SOP implementation, and 3) contracting process to ensure significant deficiencies are addressed by October 1, 2019. Warm Springs have taken steps towards advancing this work, but increasingly likely they will be out of compliance with some requirements of the Orders.

Soon after system stabilization, Warm Springs needs to move to focusing on the 120-day engineering assessment. Warm Springs has funding for this assessment, and it will be performed by PDG, same firm that did the distribution system stabilization work. PDG and EPA have had some initial scoping conversations on this assessment.

EPA (Baron) will be on-site again for monthly briefing of Tribal Council on August 12. At that point, EPA will also do a walk through to see status of distribution system work and review progress under the orders generally.

Next funders meeting has been postponed.

Detailed Call Notes – August 7, 2019:

1. Distribution system

- Status of emergency distribution system repairs and project for restoring service
 - Of the 5, 2 are replaced for vault service Industrial complex (Monday), and Catholic church vault to serving agency area (Tuesday), now working on George street vault, then tomorrow repair vaults for Greely heights and West Hills. Greely and West Hills already Clay-type valves - just need to be rebuilt. So 5 of the 7 in by end of the week. George street vaults is the main issue - line was bigger - 12" line, thought was 10". A 12" to 10" reducer with a 4" bypass needs to be requisitioned, hopefully on site tomorrow, but may be a custom piece that needs to be cut. Also ran in to class 300 flange - different bolt pattern from 150 flange. Reduction in size shouldn't reduce flow because already reduced to 8" inch in side vault.
- Any updates on monitoring/ sampling - intent was to start sampling Monday for first round of Bacti, second round on Wednesday. But might be delayed. **EPA confirms that all is needed are two rounds of sampling showing non-detect on Bacti and at least .2 residual chlorine from the following bact monitoring locations: WS-04, WS-07, WS-10, WS-13, WS-14, WS-16, WS-19, WS-22, WS-25, WS-28, WS-30, WS-32, WS-35. See WQMP for location ID.**
- Any updates on alt. water provisions - still open and serving water
- Status of contracts to meet repairs required to storage tanks in compliance order, due Oct 1 - talked to Ladd about over structure on top of tank – Ladd said he was okay, but Adam will verify in writing. Adam requested some sort of drawing from Travis that EPA could review – Travis will send. No update for IHSs on scope of work with Derrick. Need to get bids out in order to use USDA dollars. Contractor officer Tribal employment rights office to negotiate contract. This is all screen repair and water reroute, HVAC, pump replacement. Have plans from IHSs but not yet scope of work to put out bids for contracts. EPA will review status when on site next week. Travis sent email with plan from Derick at IHSs for background.

1. Plant operations

- Evidence of sedimentation tank cleaned - done
- Shift log conversation and getting coagulation SOP in place – SOP not being implemented. Baron relayed conversation with Steve Courtney on Monday, where Steve wouldn't do it without on-site training. Baron said they are required to start and EPA will trouble shoot with them if they get stuck. Chico noted they are certified operators and should know how to do it. Need to have evidence that they are doing it by briefing on Monday. Must be accountable for their workload. **Otherwise, Baron will report out that they are in violation with the requirement of the 1431 Order.**
- Training operators on event response requirements in emergency order - done
- Status of SOP changes/ contracts to meet repairs required at water plant in compliance order, due Oct 1 - see above.

Call Notes – July 31, 2019:

High level messages:

Distribution system construction to be completed by contractors in early August, conformational sampling into EPA mid-August and potentially boil water notice can be lifted by mid to late August. Alt water and boil water notice will remain in place until then. Warm Springs will be using HUD grants to recoup their costs for this work.

Warm Springs utilities have been appropriately focused on distribution system stabilization. Accordingly, they have fallen behind on the following 1431/ 1414 requirements: 1) Alt. water/ Emergency plan updated with new SOPs and clearer alt water provisions, 2) Coagulation SOP implementation, and 3) contracting process to ensure significant deficiencies are addressed by October 1, 2019. Warm Springs have taken steps towards advancing this work, and we'll continue to run it to ground.

Soon after system stabilization, Warm Springs needs to move to focusing on the 120-day engineering assessment. Warm Springs has funding for this assessment, and it will be performed by PDG, same firm that did the distribution system stabilization work.

EPA (Baron) will be on site again for monthly briefing of Tribal Council on August 12. At that point, EPA will also do a walk through to see status of distribution system work and review progress under the orders generally.

Next funders meeting will be on August 6.

Call Notes – July 31, 2019:

1. Distribution system
 - Status of emergency distribution system repairs and project for restoring service -
 - Checo/ staff focusing on insulating valve vaults before PRV install, tough because no records of lines installed/ removed/ replaced. So chasing down, 5 or 6 valves to isolate one vault. If they can't isolate at valve, will have to shut whole sections off so people won't have water. Gelco should have parts now and beginning assembly. Delivery to vaults end of this week/ beginning of next. Construction still to start August 5th. Notice will go to fire department so they know which buildings won't have water. Sampling to EPA week of Aug 12th, if good BWN can be lifted.
2. Any updates on monitoring/ sampling –
 - probably sampling week of Aug 12th
3. Any updates on alt. water provisions - still open and being used. Emergency Plan updated and submitted?
 - Not yet done. Alyssa had pen and ink version. Alt water still open with showers, even though people can boil. 2K a week for shower facilities.
4. Status of contracts to meet repairs required to storage tanks in compliance order, due Oct 1
 - Chico met with fabricator last Friday. Looking at prefab ladders first, but may have to be custom. Glass line tanks, could break with the welding, cause contamination. Might have to drain tanks after. Also looking at over frame concept for hatches. Maybe over frame bolted to hinges as workaround the rust issues. Detail drawn up to EPA before they move forward. Also lots going on waste water side contracting, getting bids in for septic tank replacement. IHSs putting together a

scope of work for intake screen. HVAC moving forward with McDonald Miller as contractor. Looking to electrical and SCADA.

- USDA on site yesterday afternoon, with Oregon Assoc. Water Utility looking at plant - may have more funds, trying to help

5. Plant operations

- Evidence of sedimentation tank cleaned - done
- Shift log conversation and getting coagulation SOP in place – Did not start his week b/c Steve was out as lead. Will talk to him tomorrow. One operator still needs his cert. OIAW might be providing some training for operators on SOP?
- Training operators on event response requirements in emergency order - done
- Status of SOP changes/ contracts to meet repairs required at water plant in compliance order, due Oct 1- see above.

6. Other

- Adequate staffing exercise - determination was no cuts possible in DW, Waste water department. Actually suggested adding Water/ Waste water director with 5 distribution/ collection operators, one lead plant operator with 3 operators under lead, plus some level of meter reading. 14 total staff with waste water/ dw combined as opposed to 8 current. Looking at ways to offset these costs and then present to council.
- EPA site visit on 12 - block of after 1 to 3:30, pre meeting on 8th.
- RCAC still on will do distribution system training for operators on residuals, water age, and calculations involved – scheduled for Aug 13 to Aug 15
- Training by PDG moving forward this week with scope of work. First training will be delivered in late nov to update SOPs at current condition of plant, and second set after engineering assessment recommendation are implemented by tribe – new equipment and SOPs, etc.
- Reseeding on wastewater plant as well this week.



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baron.adam@epa.gov

From: Baron, Adam

Sent: Wednesday, July 31, 2019 10:50 AM

To: 'Travis Wells' <travis.wells@wstribes.org>; 'Chico Holliday' <chico.holliday@wstribes.org>; 'Alyssa Macy' <alyssa.macy@wstribes.org>

Cc: Thurmon, Clarke <Thurmon.Clarke@epa.gov>; Contreras, Peter <Contreras.Peter@epa.gov>; 'Ellen H. Grover' <ehg@karnopp.com>; Wilson, Wenona <Wilson.Wenona@epa.gov>; Mark MacIntyre (<Macintyre.Mark@epa.gov>)

<Macintyre.Mark@epa.gov>

Subject: Notes from today's weekly SDWA Orders compliance check-in with Warm Springs

All –

See below for summary of today's meeting notes. No significant changes to high level summary for those of you reading quickly.

High level messages:

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Soon after system stabilization, Warm Springs needs to move to focusing on the 120-day engineering assessment. Warm Springs has funding for this assessment, and it will be performed by PDG, same firm that did the distribution system stabilization work.

EPA (Baron) will be on site again for monthly briefing of Tribal Council on August 12. At that point, EPA will also do a walk through to see status of distribution system work and review progress under the orders generally.

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Call Notes – July 31, 2019:

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 - Checo/ staff focusing on insulating valve vaults before PRV install, tough because no records of lines installed/ removed/ replaced. So chasing down, 5 or 6 valves to isolate one vault. If they can't isolate at valve, will have to shut whole sections off so people won't have water. Gelco should have parts now and beginning assembly. Delivery to vaults end of this week/ beginning of next. Construction still to start August 5th. Notice will go to fire department so they know which buildings won't have water. Sampling to EPA week of Aug 12th, if good BWN can be lifted.
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 - Chico met with fabricator last Friday. Looking at prefab ladders first, but may have to be custom. Glass line tanks, could break with the welding, cause contamination. Might have to drain tanks after. Also looking at over frame concept for hatches. Maybe over frame bolted to hinges as workaround the rust issues. Detail drawn up to EPA before they move forward. Also lots going on waste water side contracting, getting bids in for septic tank replacement. IHSs putting together a scope of work for intake screen. HVAC moving forward with McDonald Miller as contractor. Looking to electrical and SCADA.
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5. Plant operations
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 - Shift log conversation and getting coagulation SOP in place – Did not start his week b/c Steve was out as lead. Will talk to him tomorrow. One operator still needs his cert. OIAW might be providing some training for operators on SOP?
 - Training operators on event response requirements in emergency order - done
 - Status of SOP changes/ contracts to meet repairs required at water plant in compliance order, due Oct 1- see above.
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 - Training by PDG moving forward this week with scope of work. First training will be delivered in late nov to update SOPs at current condition of plant, and second set after engineering assessment recommendation are implemented by tribe – new equipment and SOPs, etc.
 - Reseeding on wastewater plant as well this week.



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baron.adam@epa.gov

From: Baron, Adam

Sent: Wednesday, July 24, 2019 3:19 PM

To: Travis Wells <travis.wells@wstribes.org>; 'Chico Holliday' <chico.holliday@wstribes.org>; Alyssa Macy

<alyssa.macy@wstribes.org>

Cc: Thurmon, Clarke <Thurmon.Clarke@epa.gov>; Contreras, Peter <Contreras.Peter@epa.gov>; Ellen H. Grover <ehg@karnopp.com>; Wilson, Wenona <Wilson.Wenona@epa.gov>

Subject: Notes from today's weekly SDWA Orders compliance check-in with Warm Springs

All –

See below for summary of today's meeting notes w/ high level summary for those of you reading quickly.

Also below are last week's notes for reference. I was just sending these to Travis, but I'll expand to this audience as requested.

High level messages:

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EPA (Baron) will be on site again for monthly briefing of Tribal Council on August 12. At that point, EPA will also do a walk through to see status of distribution system work and review progress under the orders generally.

Next funders meeting will be on August 6.

Call Notes – July 24, 2019:

1. Distribution system
 - Status of emergency distribution system repairs and project for restoring service - All contractors have POs in place, materials can be ordered and delivered. July 29th for Gelco assembly in their yard - following week for five valves installed, industrial complex valve, west hills. Aug 5th start and then Aug 9th done, then electrical upgrades in vaults. Sampling to EPA week of Aug 12th, if good BWN can be lifted.
2. Any updates on monitoring/ sampling –
 - probably sampling week of Aug 12th
3. Any updates on alt. water provisions - still open and being used. Emergency Plan updated and submitted?
 - Not yet done. Travis talked to Alyssa, it's on her stack to work with Dan but is pushed back by other priorities.
4. Status of contracts to meet repairs required to storage tanks in compliance order, due Oct 1
 - Chico met with contractor today and went through CAP page by page. Contractor will start ordering parts by Aug 1st deadline. Contractor will provide weekly progress reports based on CAP numbering, which Chico can then share with EPA.

5. Plant operations

- Evidence of sedimentation tank cleaned - done
- Shift log conversation and getting coagulation SOP in place – Chico was waiting back for Baron to contact Lad at IHSs. Lad emails came back that he can't get there until mid-September for Jar Testing training. Chico thinks operators have what they to start, so Chico will require to start each operator to start testing every 12 hr shift beginning July 29th.
- Training operators on event response requirements in emergency order - done
- Status of SOP changes/ contracts to meet repairs required at water plant in compliance order, due Oct 1- see above.

6. Other

- Tribal council requested budget exercise of cutting managers, would be Travis for utilities
- Alyssa requested exercise of giving council numbers on adequate staffing for DW and Waste water side. Will be provided to Tribal Council.
- Baron to brief Tribal Council again on Aug 12th – will only be me since things are generally tracking well
- Funders second meeting on Aug 6th – Baron won't be there
- RCAC will do distribution system training for operators on residuals, water age, and calculations involved – scheduled for Aug 13 to Aug 15
- Baron laid out idea of EPA funded training done by PDG after engineering assessment recommendation are implemented by tribe – new equipment and SOPs, etc. Asked if they saw any flaws. Said it would be welcome, it would just be about timing up with new equipment install.
- Baron will be doing a compliance inspection along with October monthly briefing to verify compliance with 1414, includes taking pictures of all fixes as evidence of compliance with order.



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baron.adam@epa.gov

From: Baron, Adam

Sent: Wednesday, July 17, 2019 10:44 AM

To: Travis Wells <travis.wells@wstribes.org>

Cc: Thurmon, Clarke <Thurmon.Clarke@epa.gov>; Ellen H. Grover <ehg@karnopp.com>

Subject: Notes from today's weekly SDWA Orders compliance check-in with Warm Springs

1. Distribution system

- Status of emergency distribution system repairs and project for restoring service.
 - Priority vault set, George street and Catholic street first, then Greely and West Hills(?). PGE price is in and within budget established of 450 K. Plan is to remove golden anderson valves and go to clayton. Gelco will install. PGE purchasing components. Class of flange change for higher PSI rating – inside vault for exit/entry, connect to spools that then connect to clay valves. Availability of parts moves start date to July 29,

planned for 3 days work. Gelco will pre assemble components off site, then deliver to site, gut vaults down to entry and exit lines, then drop in all components. Vaults will still have high flow and low flow lines, low flows as by pass. Gelco has crew of 6, 2 person each vault with one crew focused on removing lid/ prep, then another removing components, then another install. SE and Kah-Ne-Ta vault still left, will cost about 250 K. Still considering how to bring on line as quickly as possible - shock chlorine of lines after install? Maybe can be done before hand to reduce time, maybe just flushing to bacti testing. Bacti results would start coming back in first week of August. Anything else required before BWN? EPA to make clear what data is needed beforehand by check in call on 31st.

- Any updates on monitoring/ sampling
 - see above
- Any updates on alt. water provisions – emergency POCs updated?
 - Tribe has not submitted anything to EPA yet. Dan Martinez – Alyssa – Travis will ask for status.
- Status of contracts to meet repairs required to storage tanks in compliance order, due Oct 1.
 - No updates right now b/c Chico focused on valve replacement. Need to start process quickly after water is on or risk missing deadline.
- 2. Plant operations
- Shift log conversation and getting coagulation SOP in place
 - EPA trying to set up training, probably to come from IHS.
- Training operators on event response requirements in emergency order
 - reviewed with them on-site last week and operators showed evidence that they were keeping up with data requirements.
- Status of SOP changes/ contracts to meet repairs required at water plant in compliance order, due Oct 1
 - TBD – see above



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Message

From: Blust, Molly E. [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=B941E3384F0E4936A282E9E42EE090AD-BLUST, MOLL]
Sent: 10/16/2019 10:26:52 PM
To: Baron, Adam [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=563ef058707d4930868c6cf1e0828a43-Baron, Adam]
Subject: RE: Sidwalter sig defs
Attachments: Quarterly Letter Question from Chico Holliday; Question from Chico on Sidwalter; Re: Responding to your voicemail

Hi Adam –

I had helped him clear up a CCR and PN problem last Oct/Nov (see first attached email with notes that I had put in Sidwalter correspondence folder) but had never heard back from him after we updated the CCR/PN info.

I have also attached the correspondence from Chico's recent question about the quarterly letter (Re: Responding to your voicemail). I told Chico I couldn't find any CAP documents sent from him in general (just checked again now that Chico gave you that 8-8-18 date) and I cannot find a single email from him from August. I also can't remember receiving anything (though now it has been over a year so my memory could be off). I had asked him to forward the documents he had previously sent to the R10TribalDW account so that Michelle could review them but we haven't received any emails that he might have sent me last August (or anything else from Chico relating to this).

I also attached the email when I passed his recent question along to Michelle (Question from Chico on Sidwalter).

I'm not sure if any of this helps – let me know if I can do anything else (I'm here until ~4:15ish so feel free to shoot me a call)! So sorry this is taking time to track info down.

Thanks,
Molly

From: Baron, Adam <Baron.Adam@epa.gov>
Sent: Wednesday, October 16, 2019 3:01 PM
To: Blust, Molly E. <blust.molly@epa.gov>
Subject: FW: Sidwalter sig defs

Thoughts?



Adam Baron

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From: Chico Holliday <chico.holliday@wstribes.org>

Sent: Wednesday, October 16, 2019 2:51 PM

To: Baron, Adam <Baron.Adam@epa.gov>

Subject: Re: Sidwalter sig defs

I sent everything to molly blust on 08-08-18

not sure if it was suppose to go anywhere else or what other documents was needed

Chico Holliday

Water/wastewater Supervisor

541-460-2707 (c)

541-615-0962 (w)

chico.holliday@wstribes.org

On Wed, Oct 16, 2019 at 2:07 PM Baron, Adam <Baron.Adam@epa.gov> wrote:

Chico –

I looked this one up. Here were most recent sig defs. Did this work already get done? Did you provide documentation back to EPA? If so please forward to me and I'll clean it up on our side.

Deficiency	Schedule to Address Deficiency		Accomplishments (date completed)
	Milestone/Corrective Action Description	Scheduled Date	
Sources - #4 Is there a sample tap provided on the well discharge pipe following treatment			
Sources - #6 Is well vent screened with the return bend facing downward and terminating 18-inches above ground level or above minimum flood level, whichever is higher			
Sources - #7 Are conduits and junction boxes sealed to prevent contaminants from entering the well casing			



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Message

From: Blust, Molly E. [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=B941E3384F0E4936A282E9E42EE090AD-BLUST, MOLL]
Sent: 11/19/2018 11:09:51 PM
To: Blust, Molly E. [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b941e3384f0e4936a282e9e42ee090ad-Blust, Moll]
Subject: Quarterly Letter Question from Chico Holliday

Chico Holliday called me after the Quarterly Letter went out in October. He had questions about the Sidwalter water system pertaining to the Quarterly Letter including questions about an overdue CCR as well as some PNs. I told him that I would need to look into his questions before responding.

Michelle Tucker and Steve Bouck helped me with the questions. Both the CCR and PN problems were cleared up. The CCR was satisfactory and the PNs were acceptable because they were well worded and put in the CCR (timing worked out that they could include them in the CCR).

I left a message on 11/7 asking Chico to give me a call back so that we could go over his Sidwalter questions. As of 11/19 I have not received any call or voicemails from him.

Molly Blust
ORISE Participant
ORISE Internship/Research Participation Program at EPA
Office of Water and Watersheds
U.S. Environmental Protection Agency, Region 10
Phone Number: (206) 553-1058
blust.molly@epa.gov

Message

From: Blust, Molly E. [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=B941E3384F0E4936A282E9E42EE090AD-BLUST, MOLL]
Sent: 10/7/2019 10:56:33 PM
To: Tucker, Michelle [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=28b0431c287d402dbacc99ee60f4e977-Tucker, Michelle]
Subject: Question from Chico on Sidwalter
Attachments: Quarterly Letter Question from Chico Holliday

Importance: High

Hi Michelle –

Chico called to ask about the Sidwalter quarterly letter – specifically about the deficiencies and not completing a CAP. He thought that I had helped him out with this previously, but what I had helped him with was clearing up a PN/CCR problem – not anything to do with a CAP (see attached email – also saved in the Sidwalter Correspondence folder). I told him that I would need to check in with you. I know that with Sidwalter we had previously discussed sending you anything further he had sent me about surveys (since so much has been going on with Warm Springs in general).

If you could get in touch with him that would be great. I think he wants to know what documentation he needs to turn in.

Thanks,
Molly

Molly Blust
ORISE Participant
ORISE Internship/Research Participation Program at EPA
Water Division
Groundwater and Drinking Water Section
U.S. Environmental Protection Agency, Region 10
Phone Number: (206) 553-1058
blust.molly@epa.gov

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From: Blust, Molly E. [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=B941E3384F0E4936A282E9E42EE090AD-BLUST, MOLL]
Sent: 11/19/2018 11:09:51 PM
To: Blust, Molly E. [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b941e3384f0e4936a282e9e42ee090ad-Blust, Moll]
Subject: Quarterly Letter Question from Chico Holliday

Chico Holliday called me after the Quarterly Letter went out in October. He had questions about the Sidwalter water system pertaining to the Quarterly Letter including questions about an overdue CCR as well as some PNs. I told him that I would need to look into his questions before responding.

Michelle Tucker and Steve Bouck helped me with the questions. Both the CCR and PN problems were cleared up. The CCR was satisfactory and the PNs were acceptable because they were well worded and put in the CCR (timing worked out that they could include them in the CCR).

I left a message on 11/7 asking Chico to give me a call back so that we could go over his Sidwalter questions. As of 11/19 I have not received any call or voicemails from him.

Molly Blust
ORISE Participant
ORISE Internship/Research Participation Program at EPA
Office of Water and Watersheds
U.S. Environmental Protection Agency, Region 10
Phone Number: (206) 553-1058
blust.molly@epa.gov

Message

From: Chico Holliday [chico.holliday@wstribes.org]
Sent: 10/7/2019 6:10:41 PM
To: Blust, Molly E. [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b941e3384f0e4936a282e9e42ee090ad-Blust, Moll]
Subject: Re: Responding to your voicemail

Thank you!

Chico Holliday
Water/wastewater Supervisor
541-460-2707 (c)
541-615-0962 (w)
chico.holliday@wstribes.org

On Mon, Oct 7, 2019 at 10:58 AM Blust, Molly E. <blust.molly@epa.gov> wrote:

No problem – I hope Michelle can get all of your questions answered. Feel free to reach back out anytime.

Best,

Molly

From: Chico Holliday <chico.holliday@wstribes.org>
Sent: Monday, October 7, 2019 10:45 AM
To: Blust, Molly E. <blust.molly@epa.gov>
Subject: Re: Responding to your voicemail

Thank you for your help!

Chico Holliday
Water/wastewater Supervisor
541-460-2707 (c)
541-615-0962 (w)
chico.holliday@wstribes.org

On Mon, Oct 7, 2019 at 10:37 AM Blust, Molly E. <blust.molly@epa.gov> wrote:

Hi Chico –

The R10TribalDW@epa.gov email address is just our team's central email box. That way everything comes in to one place. I don't have anything in my email archives outside of information on clearing up those PN and CCR questions from last November. If you find any additional emails you sent me regarding a corrective action plan feel free to forward on to me.

We would be looking for documentation of corrections of those significant deficiencies listed on your Monitoring and Compliance report. I will pass your question on to our Ground Water Rule Manager who will be able to give you more detailed information. I hope this helps!

Thanks,

Molly

From: Chico Holliday <chico.holliday@wstribes.org>

Sent: Monday, October 7, 2019 10:06 AM

To: Blust, Molly E. <blust.molly@epa.gov>

Subject: Re: Responding to your voicemail

I am johnny new guy to the CAP . Can you please send and clarify what documnets needs submission?

I thought I had sent everything to you but was not aware I had to send anything to EPA in regards to this issue.

Chico Holliday

Water/wastewater Supervisor

541-460-2707 (c)

541-615-0962 (w)

chico.holliday@wstribes.org

On Mon, Oct 7, 2019 at 10:01 AM Blust, Molly E. <blust.molly@epa.gov> wrote:

Hi Chico,

You had sent me PN documentation that was used to clear a CCR question and some overdue PN schedules in early November of last year. I don't show that we received an updated CAP template. If you sent this to EPA previously, please forward it on to R10TribalDW@epa.gov. If you have any further updates or documentation relating to correction of significant deficiencies listed in your Quarterly Letter, please send it to R10TribalDW@epa.gov and we will make sure that it gets reviewed and processed.

Typically you will receive a response to an updated CAP within 10 business days of sending your proposed CAP or documentation of corrections in to the EPA.

Hopefully this helps and let me know if you have any further questions!

Best,

Molly

Molly Blust

ORISE Participant

ORISE Internship/Research Participation Program at EPA

Water Division

Groundwater and Drinking Water Section

U.S. Environmental Protection Agency, Region 10

Phone Number: (206) 553-1058

blust.molly@epa.gov

=====
From: Chico Holliday <chico.holliday@wstribes.org>
Sent: Monday, October 7, 2019 9:31 AM
To: Blust, Molly E. <blust.molly@epa.gov>
Subject: Re: Responding to your voicemail

Good Morning,

Yes that is correct, I remember now. I was showing in the Water reports that the Sidwalter Corrective Action Plan (CAP) was not completed.

How Often does the report gets updated ? I know I have sent out the required documentations directly to you. I am not sure who updates these or how often.

Chico Holliday

Water/wastewater Supervisor

541-460-2707 (c)

541-615-0962 (w)

chico.holliday@wstribes.org

On Fri, Oct 4, 2019 at 8:56 AM Blust, Molly E. <blust.molly@epa.gov> wrote:

Hi Chico – Did it have something to do with the Quarterly Letter that you received not terribly long ago? Definitely reach out if you think of it again!

Best,

Molly

From: Chico Holliday <chico.holliday@wstribes.org>
Sent: Thursday, October 3, 2019 9:40 AM
To: Blust, Molly E. <blust.molly@epa.gov>
Subject: Re: Responding to your voicemail

Morning,

I believe I have forgotten what my questions were. If it comes to me I will let you know. Thanks again for responding.

On Thu, Oct 3, 2019 at 9:03 AM Blust, Molly E. <blust.molly@epa.gov> wrote:

Good Morning Chico,

I hope this email finds you well. I apologize for my late response to your voicemail message – I have been out on sick leave. Were you able to reach someone else to get your questions answered? If not, let me know and I can give you a call, or you can elaborate on your question via email.

Thank you so much,

Molly

Molly Blust

ORISE Participant

ORISE Internship/Research Participation Program at EPA

Water Division

Groundwater and Drinking Water Section

U.S. Environmental Protection Agency, Region 10

Phone Number: (206) 553-1058

blust.molly@epa.gov

--
Chico Holliday

Water/wastewater Supervisor

541-460-2707 (c)

541-615-0962 (w)

chico.holliday@wstribes.org

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Message

From: Baron, Adam [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=563EF058707D4930868C6CF1E0828A43-BARON, ADAM]
Sent: 11/14/2019 5:47:09 PM
To: Ellen H. Grover [ehg@karnopp.com]
CC: michele stacona [michele.stacona@wstribes.org]; Nancy J. Hanson [njh@karnopp.com]; Brenda L Collette [BLC@karnopp.com]; Thurmon, Clarke [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=4ee51ecf20b146d18fb2874c6b0d1b31-Thurmon, Clark]; Travis Wells [travis.wells@wstribes.org]
Subject: RE: CTWS Compliance Orders

Ellen –

Thanks for checking in.

I spoke with Travis yesterday about the letter. I had already suggested some language in the bottom section specific to the extension request, which he has included. Based on the last draft I've seen, I believe that letter will be sufficient for us to respond on that requirement under the Emergency Order. Travis said the draft is in front of the Council now, and they're aiming to get it to us by this Friday, which is the due date for the engineering report.

Let me know if you need more. Otherwise we'll look forward to receiving that letter.



Adam Baron

Drinking Water Enforcement Officer
Field, Data, & Drinking Water Enforcement Section
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region 10
1200 Sixth Avenue, Suite 155
Seattle, Washington 98101
Office (206) 553-6361
baron.adam@epa.gov

From: Ellen H. Grover <ehg@karnopp.com>
Sent: Tuesday, November 12, 2019 8:06 PM
To: Baron, Adam <Baron.Adam@epa.gov>
Cc: michele stacona <michele.stacona@wstribes.org>; Nancy J. Hanson <njh@karnopp.com>; Brenda L Collette <BLC@karnopp.com>; Thurmon, Clarke <Thurmon.Clarke@epa.gov>; Travis Wells <travis.wells@wstribes.org>
Subject: RE: CTWS Compliance Orders

Hi Adam and Clarke: I know that you have been working with Travis on a funding plan for the Emergency Order. I am checking in with you on the need for an extension request letter for the Emergency Order or whether the funding letter developed by Travis is sufficient. That date is otherwise next week. Thanks! Ellen

Ellen Grover | Karnopp Petersen LLP
Partner

v: 541.382.3011 | e: ehg@karnopp.com

From: Baron, Adam [<mailto:Baron.Adam@epa.gov>]

Sent: Friday, September 27, 2019 3:11 PM

To: Ellen H. Grover <ehg@karnopp.com>

Cc: Alyssa Macy <alyssa.macy@wstribes.org>; michele stacona <michele.stacona@wstribes.org>; Nancy J. Hanson <njh@karnopp.com>; Brenda L Collette <BLC@karnopp.com>; Thurmon, Clarke <Thurmon.Clarke@epa.gov>

Subject: RE: CTWS Compliance Orders

Ellen –

Clarke is out of pocket for the next couple days due to some unforeseen circumstances, but he asked me to respond to this message for now. First, I just sent an email confirming the revised due date for 120 day Engineering Assessment is November 19, 2019. Second, EPA agrees that the due date on the air scour system repair for the river intake can be controlled by the terms of the AOC alone should they be re-negotiated between EPA and the Tribe.

If you need this message to come from EPA counsel, please let me know and I can find someone to fill in for Clarke.

Thanks.



Adam Baron

Drinking Water Enforcement Officer
Field, Data, & Drinking Water Enforcement Section
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region 10
1200 Sixth Avenue, Suite 155
Seattle, Washington 98101
Office (206) 553-6361
baron.adam@epa.gov

From: Ellen H. Grover <ehg@karnopp.com>

Sent: Wednesday, September 25, 2019 10:56 AM

To: Thurmon, Clarke <Thurmon.Clarke@epa.gov>

Cc: Baron, Adam <Baron.Adam@epa.gov>; Alyssa Macy <alyssa.macy@wstribes.org>; michele stacona <michele.stacona@wstribes.org>; Ellen H. Grover <ehg@karnopp.com>; Nancy J. Hanson <njh@karnopp.com>; Brenda L Collette <BLC@karnopp.com>

Subject: CTWS Compliance Orders

Importance: High

Hi Clarke:

Adam and I discussed the status of extension letters for the EPA orders (Administrative Compliance Order on Consent and the Emergency Order) with respect to the Warm Springs water system. Adam is meeting with CTWS staff and leadership today to confirm the status of actual compliance items in the AOC and develop, hopefully, a consensus on the applicable extension date for the AOC Order. I hope I can run a draft of the letter by you before it goes final but it would rely on Section 5.8 of the AOC for this request.

We also discussed that the Emergency Order had a later start date. It is my understanding that this start date for compliance of the Emergency Order is July 15, 2019. Accordingly, I believe the 120 day assessment would be due on or near November 11 (I haven't double checked or docketed this yet). **Can you please confirm in writing EPA's understanding of the start date and current compliance date for that?** Adam did confirm on the phone generally (but not specific dates). Because we will not be out of compliance until that November date and because we need more

information to establish a reliable extension date, I would propose that we develop a second letter of extension for the Emergency Order. Please let me know if you see a problem with that approach.

Last, there is one item that appears in both the Emergency Order and the AOC. It's the river intake scour system item (Section 3.29 of Emergency Order and Section 4.1(q)) of the AOC. I would propose that we include a footnote in our AOC extension letter requesting that the extended AOC date control compliance for purposes of both orders. Please let me know if we should handle that differently.

Thanks and I hope all is going well for you. Ellen

Ellen Grover
Partner



360 SW Bond St, Ste. 400 | Bend, OR 97702
office: 541.382.3011 | email: ehg@karnopp.com
web: www.karnopp.com | blog: www.karnopp.com/blog



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Message

From: Baron, Adam [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=563EF058707D4930868C6CF1E0828A43-BARON, ADAM]
Sent: 9/26/2019 6:35:26 PM
To: Barry Buchanan [Barry@buchananandassociates.com]; Green, Richard [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=80b69be2dc1642fb864b8bfb7f1b875b-Green, Richard]
CC: Alyssa Macy [alyssa.macy@wstribes.org]; Travis Wells [travis.wells@wstribes.org]; Keith Whisenhunt [keithw@pdgnw.com]; Ellen H. Grover [ehg@karnopp.com]; Thurmon, Clarke [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=4ee51ecf20b146d18fb2874c6b0d1b31-Thurmon, Clark]; Burgess, Karen [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=9085a27e8d724564890f33d47c72d9d1-Burgess, Karen]; Contreras, Peter [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=3c7e515833814b74a7ebafcfef8b6322-Contreras, Peter]
Subject: RE: Warm Springs ... SSDWA 1431 EPA Order - Engineering/Asset Management Study

Barry –

Happy to rope you into those calls when that contract is in place, and I hear from the Tribe they would like you there as well. Please let me know the status of that contract.

We'll also need to touch base on the scope of the 120 day engineering assessment, along with a more technical follow up with our technical people, if the Tribe does chose PDG to do that work.

Please keep me posted on both fronts.



Adam Baron

Drinking Water Enforcement Officer
Field, Data, & Drinking Water Enforcement Section
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region 10
1200 Sixth Avenue, Suite 155
Seattle, Washington 98101
Office (206) 553-6361
baron.adam@epa.gov

From: Barry Buchanan <Barry@buchananandassociates.com>
Sent: Wednesday, September 25, 2019 5:48 PM
To: Green, Richard <Green.Richard@epa.gov>
Cc: Baron, Adam <Baron.Adam@epa.gov>; Alyssa Macy <alyssa.macy@wstribes.org>; Travis Wells <travis.wells@wstribes.org>; Keith Whisenhunt <keithw@pdgnw.com>
Subject: Warm Springs ... SSDWA 1431 EPA Order - Engineering/Asset Management Study

Rick:

Thank you for speaking with me yesterday at the Warm Springs Funding Summit. I wished to follow up with you re. the opportunity for funding of the Engineering/Asset Management study required by the May 23rd, 2019 EPA Order.

If I understood you correctly EPA and the State have a joint funding program available for Asset Management studies, which is what we interpret as one of the requirements of the EPA Warm Springs Order.

It is our intention to undertake (given the funding) a study that would include, but not be limited to:

- 1) The establishment of a Water System Asset Register
- 2) Determination and agreement of Levels of service
- 3) Establishing the State of the Asset judged against the required LoS, specifically the prime failure modes: Capacity, Condition, Compliance, and Efficiency (3CE)
- 4) Determination of the assets' criticality and their associated risk profiles to establish urgency and priority
- 5) Identify appropriate risk management; avoidance, minimization, mitigation strategies
- 6) Determine appropriate Least Life Cycle Cost solutions for the identified issues
- 7) Establish a whole of life Asset Management Plan including CapEx and Opex implementation, continuous improvement, programs.

I would appreciate an opportunity to visit with you or for you to pointed me the right direction to understand the requirements and availability of the study grant.

Please let me know your availability for a discussion in near future.

Kind regards

bb.

Adam ... I spoke briefly with Dan yesterday and he ask that we keep you apprised of anything we do in association with the Warm Springs EPA Order.

He also agreed that now we are being engaged by the WS TRIBES to Program Manage the HUD and BIA funds for the rectification of items at the WTP it would be appropriate for us to be involved in your weekly meeting with Travis and Chico.

Your thoughts?

bb.

Barry Buchanan, P.E.

PRINCIPAL CONSULTANT | BUCHANAN and ASSOCIATES

ASSET MANAGEMENT; *INFRA P*

phone: 360 901 1564

e-mail: Barry@BuchananAndAssociates.com

Message

From: Baron, Adam [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=563EF058707D4930868C6CF1E0828A43-BARON, ADAM]
Sent: 8/14/2019 9:05:18 PM
To: Chico Holliday [chico.holliday@wstribes.org]
Subject: RE: Analysis Report and Invoice B9H1202

These came through just fine and looks like all negative with adequate chlorine. Standing by for second round.



Adam Baron

Drinking Water Enforcement Officer
Field, Data, & Drinking Water Enforcement Section
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region 10
1200 Sixth Avenue, Suite 155
Seattle, Washington 98101
Office (206) 553-6361
baron.adam@epa.gov

From: Chico Holliday <chico.holliday@wstribes.org>
Sent: Wednesday, August 14, 2019 1:09 PM
To: Baron, Adam <Baron.Adam@epa.gov>
Subject: Re: Analysis Report and Invoice B9H1202

try this .

I also got the verbal on the 2nd round of Bac T samples : they are all Negative as well . I will have the hard copy later today

Chico Holliday
Water/wastewater Supervisor
541-460-2707 (c)
541-615-0962 (w)
chico.holliday@wstribes.org

On Wed, Aug 14, 2019 at 12:41 PM Baron, Adam <Baron.Adam@epa.gov> wrote:

Chico –

For some reason I get error when trying to open that attachment. See below. Maybe try downloading onto your PC and re-attach as pdf? If that doesn't work, maybe just take screen shots?

Standing by.



Adam Baron

Drinking Water Enforcement Officer

Field, Data, & Drinking Water Enforcement Section

Enforcement and Compliance Assurance Division

U.S. Environmental Protection Agency, Region 10

1200 Sixth Avenue, Suite 155

Seattle, Washington 98101

Office (206) 553-6361

baron.adam@epa.gov

From: Chico Holliday <chico.holliday@wstribes.org>

Sent: Wednesday, August 14, 2019 12:17 PM

To: Baron, Adam <Baron.Adam@epa.gov>; Travis Wells <travis.wells@wstribes.org>

Subject: Fwd: Analysis Report and Invoice B9H1202

Labs results from Monday 08/12/2019 for the Boil water notice, 1st round of Bac T samples completed

Chico Holliday

Water/wastewater Supervisor

541-460-2707 (c)

541-615-0962 (w)

chico.holliday@wstribes.org

----- Forwarded message -----

From: **Chico Holliday** <chico.holliday@wstribes.org>

Date: Wed, Aug 14, 2019 at 12:09 PM

Subject: Re: Analysis Report and Invoice B9H1202

To: dphillips <dphillips@urcmail.net>

Monday lab results was all negative

Chico Holliday[Preview attachment B9H1202.pdf](#)



[B9H1202.pdf](#)

[580 KB](#)

Water/wastewater Supervisor

541-460-2707 (c)

541-615-0962 (w)

chico.holliday@wstribes.org

On Wed, Aug 14, 2019 at 9:16 AM dphillips <dphillips@urcmail.net> wrote:

Good Morning,

Thank you for choosing us for your testing needs. I have attached your water report and invoice. Please email me if you have any questions. Have a great day!

Thanks,

Dan Phillips
Laboratory Manager
Umpqua Research Company
541-312-9454

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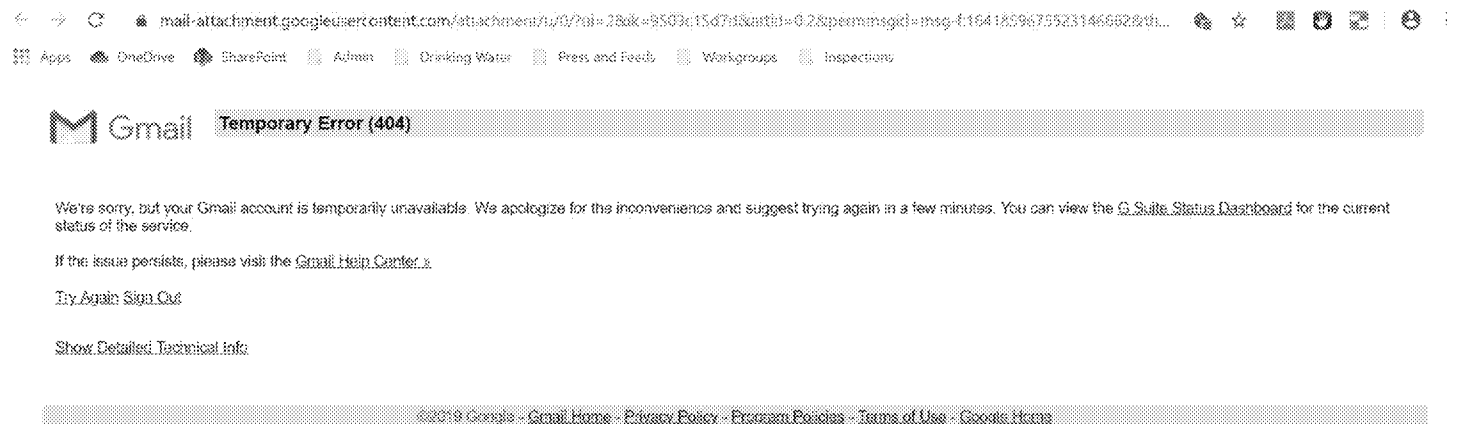
Message

From: Baron, Adam [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=563EF058707D4930868C6CF1E0828A43-BARON, ADAM]
Sent: 8/14/2019 7:41:51 PM
To: Chico Holliday [chico.holliday@wstribes.org]; Travis Wells [travis.wells@wstribes.org]
Subject: RE: Analysis Report and Invoice B9H1202

Chico –

For some reason I get error when trying to open that attachment. See below. Maybe try downloading onto your PC and re-attach as pdf? If that doesn't work, maybe just take screen shots?

Standing by.



Adam Baron
Drinking Water Enforcement Officer
Field, Data, & Drinking Water Enforcement Section
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region 10
1200 Sixth Avenue, Suite 155
Seattle, Washington 98101
Office (206) 553-6361
baron.adam@epa.gov

From: Chico Holliday <chico.holliday@wstribes.org>
Sent: Wednesday, August 14, 2019 12:17 PM
To: Baron, Adam <Baron.Adam@epa.gov>; Travis Wells <travis.wells@wstribes.org>
Subject: Fwd: Analysis Report and Invoice B9H1202

Labs results from Monday 08/12/2019 for the Boil water notice, 1st round of Bac T samples completed

Chico Holliday
Water/wastewater Supervisor

ED_004384_00002334-00001

541-460-2707 (c)
541-615-0962 (w)
chico.holliday@wstribes.org


----- Forwarded message -----

From: **Chico Holliday** <chico.holliday@wstribes.org>
Date: Wed, Aug 14, 2019 at 12:09 PM
Subject: Re: Analysis Report and Invoice B9H1202
To: dphillips <dphillips@urcmail.net>

Monday lab results was all negative

Chico Holliday [Preview attachment B9H1202.pdf](#)



 [B9H1202.pdf](#)
580 KB

Water/wastewater Supervisor
541-460-2707 (c)
541-615-0962 (w)
chico.holliday@wstribes.org

On Wed, Aug 14, 2019 at 9:16 AM dphillips <dphillips@urcmail.net> wrote:

Good Morning,

Thank you for choosing us for your testing needs. I have attached your water report and invoice. Please email me if you have any questions. Have a great day!

Thanks,

Dan Phillips
Laboratory Manager
Umpqua Research Company
541-312-9454

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